

REPORT

on compliance of legislation regulating snap parliamentary elections on February 9, 2020 to the Milli Mejlis of the Azerbaijan Republic with international standards for democratic elections

Within the framework of a long-term monitoring of snap elections to the Milli Mejlis of the Azerbaijan Republic (hereinafter – Milli Mejlis, the Parliament), the International Institute for Monitoring Democracy Development, Parliamentarianism and Suffrage Protection of Citizens of IPA CIS Member Nations (hereinafter – IPA CIS IIMDD) examined the national legislation for compliance with:

- provisions of the Convention on Standards of Democratic, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States (*hereinafter – CIS Convention*)¹;
- UN documents (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, as well as the comments adopted by the UN Committee to clarify specific provisions of the Covenant, including Article 25 ‘Participation in Public Affairs’, the Declaration of Principles for International Observation (2005);

¹ Applicability of the CIS Convention to election monitoring regarding the Azerbaijan Republic is justified by the following evidence:

- the Agreement between the IPA CIS and the Milli Mejlis of the Azerbaijan Republic Establishing the Baku Branch of the International Institute for Monitoring Democracy Development, Parliamentarianism and Suffrage Protection of Citizens of IPA CIS Member Nations (2007)

- long-standing implementation of the Convention by CIS missions and IPA CIS observers during observation of the general national elections in the Azerbaijan Republic;

- the fact that OSCE ODIHR observes the CIS Convention provisions reveals the integrity of fundamental international regulation that formulates principles of election observation.

- acts of the Organization for Security and Co-operation in Europe (the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension, *hereinafter the Copenhagen document*; other intergovernmental agreements adopted within the OSCE framework);
- recommendations of the European Commission for Democracy through Law (*hereinafter Venice Commission*) consolidated in the Code of Good Practice in Electoral Matters that includes Guidelines and Explanatory Report.

The mission examined the national electoral legislation regarding compliance with the Recommendations of the CIS Interparliamentary Assembly (*hereinafter – IPA CIS*) Facilitating Consolidation of National Laws of IPA CIS Member States with International Election Standards; recommendations of the CIS observation mission in the aftermath to the national elections held earlier in the Azerbaijan Republic.

This Report stipulates the mission findings.

General Description of Electoral Legislation

According to the Constitution of the Azerbaijan Republic (*hereinafter Constitution*; references to relevant Articles are indicated in this section), the sole source of state power and sovereignty in the Azerbaijan Republic are the people of Azerbaijan (Art. 1). Their sovereign right is exercised including through their representatives elected by universal, equal and direct suffrage through free, secret and personal ballot (Art. 2).

The citizens of the Azerbaijan Republic have the right to participate in decision-making on public affairs both directly and through elected representatives (Art. 2) and, therefore, have the right to elect and be elected to state bodies (Art. 56).

State power in the Azerbaijan Republic is based on the principle of division of powers; the Milli Mejlis of the Azerbaijan

Republic exercises legislative power (Art. 7; 81). Members of the Milli Mejlis of the Azerbaijan Republic are elected based on majority voting systems and general, equal and direct elections by free, individual and secret voting (Art. 83).

Every citizen of the Azerbaijan Republic not younger than 25 can be elected member of the Milli Mejlis of the Azerbaijan Republic in an established order. The Constitution also provides for grounds (Art. 85) to deprive citizens of passive suffrage (persons whose incapacity has been confirmed by law court, those condemned for grave crime, or serving a sentence due to enforced verdict of court), as well as elucidates non-conformity of MP's mandate with a specific status or activity (persons having double citizenship or obligations to other states, or employed by executive or judicial authorities, persons involved in other remunerable activity except scientific, pedagogical and creative activity, religious men).

Accuracy of results of elections is validated and approved by the Constitutional Court of the Republic as specified in the law (Art. 86).

Apart from the Constitution, the legal framework for parliamentary elections includes the Election Code of the Azerbaijan Republic (hereinafter the Election Code or law; hereinafter all references refer to provisions of the Election Code if not specified otherwise) and other regulations, providing for specific aspects of the election process, including the Code of Administrative Procedures of the Azerbaijan Republic, the Code of Administrative Offenses of the Azerbaijan Republic, the Criminal Code of the Azerbaijan Republic, the Azerbaijan Republic Laws on Political Parties, on Non-Governmental Organizations (public unions and foundations), on Access to Information, on Mass Media, on Television- and Radiobroadcasting, on State Registration and State Registry of Legal Entities, on Freedom of Assembly.

Thus, these legislative acts jointly elaborate legal regulatory principles for parliamentary elections in conformity with international documents that formulate the standards of democratic elections.

The legal framework for parliamentary elections also includes universally acknowledged principles of international law and international obligations of the Azerbaijan Republic. The Constitution stipulates that international agreements, whereto the Azerbaijan Republic is signatory, are indispensable for the national legal framework (Art. 148). International documents related to electoral legislation and incorporated into national regulation include acts by international and regional organizations, listed in the preamble to this Report.

The regulatory law governing parliamentary elections is based on acts promulgated by the Central Election Commission of the Azerbaijan Republic (hereinafter – CEC AR). Within the scope of authority, the CEC AR shall adopt and publish regulations and guidelines regarding implementation of the Election Code (Art. 25.3), as well as provide all subordinate election commissions with regulations and guidelines regarding implementation of the Election Code; provide clarifications regarding legislation on elections to ensure integrity of implementation; if required, refer suggestions regarding interpretation of the Election Code and other legal acts on elections to legislative branch entities; study and integrate law enforcement practices for elections; submit proposals to legislative branch entities concerning efficiency of the Code².

² As a case in point, anticipating the 2020 Parliamentary Elections, CEC AR developed and adopted the Instructions Clarifying Nomination Procedure for Milli Mejlis Elections Candidates by Registered Political Parties or Coalition of Parties; Instructions Clarifying Nomination Procedure for Self-Nominated Milli Mejlis Elections Candidates and Those Nominated by a Group of Voters; Instructions Clarifying Handover of Signature Lists to Prospective Candidates, Their Agents, Authorized Representatives of Political Parties or Coalition of Parties; Instructions Clarifying the Gathering and Presentation of Voters' Signatures to the Precinct Election Commission to Support the Candidate Nominated for Milli Mejlis Elections; Instructions Clarifying the Procedure for Checking the Accuracy of Information Submitted by Milli Mejlis Elections Candidates for Registration; Instructions Clarifying the Opening of Dedicated Bank Accounts to Finance the Milli Mejlis Elections; Instructions Clarifying Financial Contributions for Election Funding, Accounting and Bookkeeping Regarding Milli Mejlis Elections Expenses; Instructions Clarifying Pre-Election Campaigning in Mass Media Regarding Milli Mejlis Elections; Instructions on Drafting Outcoming Protocols of Election Commissions on Voting Results of Milli Mejlis Elections.

Thus, the composition and hierarchy of specific regulatory documents, that taken together, govern parliamentary elections in the Azerbaijan Republic, complies with the CIS Convention requirements (Art. 1, Clause 4), as well as the Venice Commission recommendations (Clause a.2.II of the Code of Good Practice in Electoral Matters), stipulating that the Constitution and legislation shall be the primary source of legal electoral regulation.

In 2016, the Constitution of the Azerbaijan Republic was amended in order to grant the power to dissolve the Milli Mejlis to the Head of State on exhaustive grounds, including the termination of powers of the Parliament for ‘failure to fulfill duties’ (Art 981, part 1¹).

Since the Constitution does not provide the Parliament with possibilities for self-dissolution, implementation of the novelty under consideration required the Milli Mejlis to appeal to the Head of State and report on the current situation as impeding the Parliament to exercise its powers, followed by the appeal of the Head of State to the Constitutional Court of the Azerbaijan Republic to confirm constitutional grounds for dissolution of the Parliament and calling snap elections. According to the Plenum Resolution of the Constitutional Court of the Azerbaijan Republic, adopted in response to the appeal, the Parliament has the authority to decide whether to continue operation or to dissolve based on the self-assessment regarding the execution of powers granted by the Constitution; provided that the majority of deputies adopt an appropriately formulated position declaring further execution of powers as impossible, a constitutional ground for dissolution of Parliament is established.³ Considering the Constitutional provisions and the legal position, the President of the Azerbaijan Republic issued the Decree on December 5, 2019 to dissolve the Parliament and appoint snap parliamentary elections. Thus, by

³ The Plenum Resolution of the Constitutional Court of the Azerbaijan Republic, dated December 4, 2019 on Conformity of Statement Issued by the Milli Mejlis of the Azerbaijan Republic Appealing to the President of the Azerbaijan Republic Regarding the Call for Snap Milli Mejlis Elections, dated December 2, 2019 with Constitution of the Azerbaijan Republic.

declaring the current election campaign, the Azerbaijan Republic is going to probe the format of snap parliamentary elections. It is recommended to specify the parliament self-dissolution procedure to improve the national legislation.

Since the last parliamentary elections, the electoral legislation has incorporated a number of amendments regarding the pre-election campaigning (cancellation of state funding), voting procedure (no envelopes for ballot papers) and other measures.

In general, national electoral law elaborately enough stipulates the procedures to organize and hold elections to the Milli Mejlis of the Azerbaijan Republic and includes fundamental provisions of international electoral standards.

Formalization of Certain International Electoral Standards

International legal acts set the standards for democratic elections and promulgate universal, equal and direct suffrage by free, secret and personal ballot as fundamental principles (CIS Convention, Art. 1). According to the Constitution of the Azerbaijan Republic (Art. 83) and in compliance with the Election Code (Art. 2), Parliamentary Elections to the Milli Mejlis of the Azerbaijan Republic are based on universal, equal and direct suffrage by free, secret and personal ballot, as required by the International Covenant on Civil and Political Rights (Art. 25, Clause b) that stipulates that every citizen shall have the right and the opportunity, without any of the distinctions and without unreasonable restrictions to vote and to be elected at authentic periodic elections which shall be held by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

Universal Suffrage Principle

Under the Constitution (Art. 83), as well as other national legislative acts, the procedure of elections of members to the Milli Mejlis of the Azerbaijan Republic shall be based on the principle of universal suffrage, whereby citizens of the Azerbaijan Republic

shall have the right to vote and to be elected, irrespective of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions and other public organizations (the Election Code, Art. 3).

Every citizen of the Azerbaijan Republic, who has attained the age of 18 (by or on the day of elections), shall enjoy active suffrage. Likewise, stateless persons permanently residing in the Azerbaijan Republic for no less than 5 years shall have the right to vote at Parliamentary elections (Art. 12, Clause 2).

Every citizen of the Azerbaijan Republic, who has attained the age of 18 and is eligible for active suffrage shall enjoy passive suffrage provided they are not subject to constraints stipulated in acting national law.

The principle of universal suffrage directly depends on setting the age to vote without discrimination in accordance with national electoral legislation in order to ensure active and passive suffrage. The constraints to vote (see Art.56 of the Constitution, Art. 15 of the Election Code) and to be elected (see Art.85 of the Constitution, Art. 13 of the Election Code) in Milli Mejlis elections, as well as provisions on incompatibility of positions (Art. 14) and other cases of citizens' non-participation in voting (Art. 16) are in conformity with provisions of the CIS Convention (Art. 1, Clause 3) and similar provisions of the Venice Commission Guidelines (I.1.1), stipulating that the constraints imposed on the right to vote shall neither limit or deprive universally recognized human and civil rights and freedoms, constitutional and legislative guarantees thereof nor be discriminatory in nature. However, the constraints imposed on passive right to vote according to the national legislation address 'other political and legal obligations', along with specific obligations to foreign state (Art. 13.3.4), impregnated with indefiniteness and risks of unjustified limitations of the passive right to vote. IPA CIS IIMDD expert group recommends to specify the list of grounds limiting the passive right to vote to avoid elusive language and improve electoral legislation.

According to the IPA CIS Recommendations, the principle of universal suffrage implies that citizens who are located outside the territory of the state shall have equal rights to vote with other citizens; diplomatic representative offices and consulates of the country shall assist citizens in executing their rights to vote (Clause 1.6), which highlights how critical it is to ensure execution of the active right to vote out of the country by setting up polling stations at diplomatic representative offices, consulates, and possibly other venues in a foreign country.

Considering mobility of citizens and the specific settings for every particular country, the Venice Commission also recommends citizens, who are staying abroad, to take a proactive approach to the right to vote, because thus they are going to empower national citizenship. Considering out-of-country voting and its impact on the outcome of national elections, options for out-of-country voting shall be preferably provided, including in case of parliamentary elections by a simple majority from single-mandate constituencies. To this end, specific quotas shall be introduced to reflect representation of diasporas in the parliament. Meanwhile, out-of-country voting may provide options for registration either with a particular constituency within the country or with a foreign constituency; the number of out-of-country voters per each venue shall be proportionate to the number of voters per venue in the country. Noting that deprivation of the right to vote out-of-country or limitations in the right impose constraints on universal suffrage, the Venice Commission, however, deems that currently failure to implement this right unconditionally would not invalidate traditional European principles. As soon as out-of-country voting depends on the settings in every particular country, including infrastructure, administrative and financial limitations, as well as internal election procedures and the level of social trust, it is not mandatory to grant citizens staying abroad the right to vote and to be elected (Report on Out-of-Country Voting, 2011; Clauses 17, 19, 70, 81, 94, 98. 99).

Therefore, absence of provisions in the national legislation on out-of-country voting at the Milli Mejlis parliamentary

elections (Art. 16.5), as well as provisions on polling stations abroad does not contradict international obligations regarding democratic elections. Nevertheless, considering provisions of international documents referred to herein, it is recommended to focus on feasible out-of-country voting mechanisms for parliamentary elections based on majority voting to further improve national legislation, especially on international majority voting practices compatible with international electoral standards and the principles of the CIS Convention, in particular.⁴

The principle of universal suffrage is guaranteed by the lists of voters. A consolidated list of voters is sustained by the CEC AR and shall be updated annually based on data provided by subordinate election commissions (Art. 45, Clauses 1-2). Timely correction of mistakes in the list of voters is included in the scope of powers of precinct election commissions (Art. 46). Overall, preparation and update of lists of voters as stipulated by national legislation ensures implementation of international standards regarding universal suffrage.

As long as passive registration of voters is used in the Azerbaijan Republic, whereby the role of public authorities is pivotal, an elaborate preparation, examination, and updating procedure for lists of voters shall be in place. National laws and regulations describe these procedures at length.

To guarantee the principle of universal suffrage, different alternative voting formats are extensively used. Thus, citizens who are unable to vote at the local polling station of their residence can have their deregistration voting certificates issued with a respective constituency (45 to 25 days prior to election day) or precinct (24 to 3 days prior to election day) election commission to be granted the possibility to vote at any precinct where they are staying on the election day (Article 101).

⁴Precisely, such mechanisms may use either quotas to ensure diasporas are represented in the parliament, which means that foreign constituencies (constituency zones) are established with dedicated local deputies representing extraterritorial citizens; or a specific layout of single-mandate constituencies that would consider extraterritorial voters and distribute their votes between constituents where the number of voters is less than the minimum threshold required for single deputy representation; this allows to harmonize the number of voters per single member of parliament (which in turn both universal and equal suffrage).

Moreover, precinct election commissions shall use mobile ballot boxes to facilitate voting by persons with disabilities who are unable to come to the polling station due to health issues. Voting outside the voting premises shall be witnessed by at least two polling station officials belonging to different political parties or not affiliated with any party. Moreover, voting officials responsible for voting outside the voting premises shall receive the number of ballots either identical to the number of requests for out-of-premises voting or not exceeding it by more than three extra ballots (Article 105).

Thus, national legislation provides adequate regulation for parliamentary elections by universal suffrage.

Principle of Universal Suffrage

The principle of universal suffrage gives all the voters an equal right to contribute to the outcome of elections.

According to law, citizens shall enjoy equality in elections (Art. 4, Clause 1). Each citizen shall have a single vote for each poll whereas each vote shall hold equal weight (Art. 4, Clauses 2, 3), in conformity with the Venice Commission Recommendations.

This principle reflects the way the layout of polling stations is established. According to law, polling stations shall be established considering the number of registered voters, in order to hold voting and the count of votes every 5 years within the territories of municipalities. The number of voters registered within the territory of each polling station should be, at most, 1500 and, at least, 50; pursuant to this requirement some polling stations may undergo organizational change prior to expiration of the timeframe defined therein (Clauses 35.1, 35.3.1).

Thus, the national legislation provides adequate regulation for parliamentary elections by universal suffrage.

Direct Suffrage

Under the Constitution, the Milli Mejlis is elected through direct elections (Art. 83); the Election Code stipulates that at parliamentary elections voters shall vote for candidates directly (Clauses 2, 5).

Thus, national legislation provides adequate standards for parliamentary elections by direct suffrage (Art. 4, Clause 5 of the CIS Convention).

Secret Ballot Principle

Secret ballot guarantees free elections and prevents potential pressure on voters (Art. 5 of the CIS Convention; Section I.4 of the Code of Good Practice Guidelines of the Venice Commission).

Under the Election Code, voting by secret ballot is a fundamental principle of elections. Moreover, voting shall exclude any control over the expression of voters' will (Art. 6).

To guarantee the secret ballot principle, the Election Code stipulates that voting venues shall be equipped with voting booths designed to ensure that voters can fill in the ballot without revealing their votes to anyone.

National legislation provides both general and specific mechanisms to prevent voters from being controlled or observed in whatever manner while they are recording their votes, as well as to curb other violations of secret ballot principle.

To improve implementation of the general principle of secret ballot, thus excluding any control over the expression of voters' will (Art 6), precinct election commissions shall ensure voting by secret ballot (Art. 37).

To exclude any control over the expression of voters' will in conformity with international acts on suffrage, voting procedure at voting venues shall be set up according to the rules of voting (Art. 104).

Secret ballot principle shall also impose liabilities for violation thereof.

Thus, national legislation provides adequate regulation for parliamentary elections by secret ballot.

Periodic and Obligatory Elections

Responsibility to hold parliamentary elections is enshrined in the Constitution stipulating that the people of Azerbaijan exercise their sovereign right including through their representatives elected (Art.2); no one except authorized representatives elected by the people will have the right to represent the people (Art. 4); state power in the Azerbaijan Republic is based on a principle of division of powers whereby the Milli Mejlis exercises legislative power (Art. 7) and is elected based on majority voting system (Art. 83).

Under the Constitution, elections to the Milli Mejlis take place every 5 years on the first Sunday of November (Art. 84). Pursuant to this provision the President of the Azerbaijan Republic shall identify the election day to elect members of the reconvened parliament (Art. 145).

Currently, the Azerbaijan Republic is holding its snap parliamentary elections for the first time. Considering that elections of the same level shall be split within a regular timeframe, the principle of periodic elections as is shall not exclude snap elections as an option. Moreover, similar to regular elections, international documents recognize snap elections as a 'lawful democratic tool to elect and control authorities that act on behalf of the people'. PACE Resolution 1549/2007 stipulates that 'snap elections have become regular practice in all democratic countries of the Council of Europe and should be therefore accepted as a key tool to achieve political tradeoff'. To be deemed democratic, elections shall be held in compliance with the legislative procedure that guarantees faithful campaigning and freedom of choice to voters.

To this end, as the Venice Commission noted in its documents, the parliament is never arbitrary and shall contribute to due functioning of democratic institutions instead. Importantly, political parties had enough time to prepare to the elections and avoid any unreasonable delay of parliamentary elections; it is hereto recommended to determine the minimum and maximum number of days that have to elapse after the date of elections had been established until the day of voting; these guarantees shall be incorporated in constitutional law to avoid abuse. The minimum

and maximum number of days that have to elapse after the dissolution of parliament, before snap elections can be held, as well as after the date of elections had been established, before the day of voting; this provision shall be enforced to pursue the following two-fold aim: the minimum number of days allows to ensure that political parties are promptly informed to prepare for elections; the maximum number of days ensures democratic expression of people's will within reasonable timespan upon dissolution of parliament (Report on Choosing the Date of an Election by the Venice Commission, 2007).

Currently, the Election Code regulation for snap elections held due to termination of powers of the highest state authorities includes provisions on snap elections to the office of the Head of State only. Further improvement of electoral legislation should incorporate more specific provisions to determine the order and procedure for early termination of parliament activities.

Public or military emergency shall be deemed an exception to the principle of periodic elections as per the Constitution (Art. 101), which does not violate the standards of democratic elections.

Thus, national legislation provides relevant standards and regulation to hold periodic and obligatory parliamentary elections.

Transparent and Open Voting. Guarantees Associated with the Status of National or International (Foreign) Observer

Open and transparent elections are a fundamental guarantee for democratic elections in order to ensure voters are fully informed on preparation, process, and results of elections (Art. 7 of the CIS Convention).

According to general provisions of the national electoral legislation, elections shall be open and transparent (Art. 2, Clause 5). To ensure compliance with this principle, legislation suggests among other measures that activities of election commissions of any level are open to all voters (Art. 40, Clause 1), in compliance with international standards. Election commissions shall inform the citizens on the biography of each candidate, the results of registration, the list of candidates, other information received by

the election commission about candidates, and voting results (Art. 40, Clause 11), as well as ensure transparency of information on allocations to election funds and spending (Art. 95).

In due order in the run-up for elections, members of election commissions, candidates registered within the relevant constituency and their authorized representatives/agents shall have the right to observe vote counting and meetings of election commissions; familiarize themselves with, and observe handling of ballot papers, voters' lists, deregistration voting certificates, and protocols of voting results; obtain copies of Constituency and Precinct Election Commissions decisions, as well as other election documents (except for voter lists, deregistration voting certificates, ballot sheets, and signature sheets); observe implementation of other election activities. Individual observers under consideration shall not require an extra permit or registration issued by election commissions in order to attend the meetings of the relevant election commissions or familiarize with the above-mentioned documents. A relevant election commission shall grant these individuals free access to the venue where election documents are handled or votes counted (Art. 40). This allows both to monitor activities of election commission and to efficiently implement the principle of transparency.

According to international standards for democratic elections, 'presence of observers can enhance the electoral process for States in which elections are taking place' (Copenhagen Document, Clause 8). The law states that political parties, candidates, dedicated social organizations can appoint observers and grant them substantial powers. Active voters, however, carry out observation on their own motion (Art. 42). International observers are granted a broad spectrum of powers as well (Art. 44).

According to international standards for democratic elections, 'national observers shall be provided with as broad opportunities as possible to participate in election observation' (IPA CIS Recommendations, Clause II. 3.2). Meanwhile, according to law, observer is defined as a person appointed by political parties, non-governmental organizations, or candidates to

observe the course of elections and registered in the relevant election commission in accordance with regulations provided by law (Art. 1.1.19). Thus, the general regulation (legislative definition), states a closed list method and does not provide for the specific regulation (Art. 40.5), that allows citizens to carry out observation based on his/her own initiative.

According to law, international and domestic observers shall have the same rights (Art. 42.1). However, it is international observers only, who have the right to address mass media and conduct press conferences on election legislation, preparation and conduct of elections (Art. 44.8). In this respect, to avoid potential disputes in case of law enforcement discrepancies, it is recommended to refer to the respective fundamental principle declaring equal rights of local and international observers. Moreover, the above-mentioned provisions are in conformity with transparent and open elections provided that the rights of international observers to communicate with the media during elections extend beyond these provisions, whereas the list of individuals who international observers shall have the right to meet with (voters, candidates, registered candidates, members of election commissions, authorized representatives of political parties, agents of registered candidates - Art. 44.9) is not exhausted by this list.

The Election Code elaborates provision and execution of rights of candidates, as well as other participants of election procedure to express their position in public. Entities are legally responsible for violations committed during election campaigning.

Mass media have the right to participate in the meetings of election commissions and their activities regarding handling of documents and counting of votes (Art. 40, Clause 8). Moreover, mass media may cover meetings of all election commissions, familiarize themselves with protocols on voting results and election returns, and obtain a copy of election commission decisions, protocols and attached documents (Art. 43, Clause 1). These provisions promote full-fledged involvement of mass media and reinforce guarantees of transparent and open elections.

As soon as CEC AR shall set the rules for accreditation of exit-poll organizations, as well as perform the accreditation (Art. 25.2.23), this regulation complies with transparent and open elections provided that exit-polls and other surveys are held upon notification without obtaining a specific permit.

Moreover, considering that ‘the right to access information implies open access to documents of public interest (General comment No. 34 of the UN Human Rights Committee to the International Covenant on Civil and Political Rights, Art. 19. Freedom of Opinion and Expression, 2011), publication of minutes of constituency election commissions, as well as outgoing reports and recommendations produced by national and international observers in the aftermath of elections at the CEC AR web-page would enhance transparency of elections.

To this end, it is also recommended to publish preliminary and final lists of voters on the CEC AR web-page. Election participants and observers shall be able to verify reliability of produced and updated lists of voters and ensure data reliability, as well as protection from any risks, possible abuse; therefore, according to the Venice Commission recommendations, ‘lists of voters shall be published’ in open access (Guidelines, I.1.2.iii).

Highlighting the ultimate relevance of a balance between the right to confidentiality of personal data and the right to access information on elections in order to satisfy personal, as well as political rights; considering that personal data protection is generally known as a limitation on the right to access information; and without excluding disclosure of lists of voters in principle in order to ensure required transparency of elections, international standards provide ways to combine reasonable disclosure of voters’ data and protection of personal data (Guidelines Concerning Computerized Personal Data Files adopted by the UN General Assembly in Resolution 45/95 as of December 14 1990 г., Clause3; Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 1981, with Amendments contained in 2018 Protocol; Additional Protocol to the Convention on Oversight Bodies and Crossborder Data Flows, 2001). Relevant harmonization is attained through

careful choice of voters' data to be included in official registers. In this respect, the register of voters shall not include identical amount personal data, contained in the general register of the population, which is normally used as a bases; only voter identification data shall be available for public access to identify the voter as an individual eligible to vote at particular elections.

According to the purpose binding principle established by international standards, the list of voters shall not contain other information than is necessary to identify of the voter as an individual, and ensure eligibility of passive suffrage in particular cases. Moreover, international standards of personal data protection stipulate specific measures to protect personal data processing or storage from destruction, accidental loss, unauthorized access, alteration, or distribution.

Thus, national legislation provides relevant regulation to hold transparent and open parliamentary elections.

Free Elections

Free participation in elections means that voters have the right to make their choice on their participation or non-participation in elections without any influence, violence, threat to apply violence or an illegal coercion, not being afraid of penalty or influence (Art. 8 of the CIS Convention).

National legislation stipulates that participation of citizens in elections shall be free and voluntary. Nobody shall have the right to put pressure on a citizen to participate or not to participate in elections (Art. 2, Clause 2). Election participants shall not obstruct voters from free expression of their will (Art. 2, Clause 6, Clause 7).

Pursuant to this aim, national legislation stipulates that the process of voting shall exclude any control over the expression of a voter's will, whereas campaigns shall be prohibited to violate law, reward voters or use other illegal means to influence voters (Art. 6, 88). In case of violation of election legislation, the election commission can refuse or cancel registration of such candidate through litigation (Art. 113).

The right of voters to freely express their opinions is guaranteed by legislation makes election participants eligible to conduct election campaigns and inform citizens about manifestoes of candidates, parties and political blocs through mass media.

Meticulous regulation of voting is another guarantee of free elections (Art. 104, 105, 167).

Thus, existing national legislation complies the CIS Convention requirements regarding prohibition of psychological, physical, religious compulsion or appeals to violence, or threat to application of violence, or any other forms of compulsion (Art.8, Clause 3).

Fair elections principle is incompatible with voters being deprived of the right to exercise active suffrage without judicial review. According to law, once there is evidence that a voter has been affected who has not voted yet, such voter shall not be allowed to vote, whereas his/her ballot shall be withdrawn and deemed void (Art. 104.13); this provision contradicts the Constitution and exhaustive grounds stipulated therein to restrict active suffrage, as well as the general provisions of the Election Code, that are based on Article 56 of the Constitution and guarantee universal suffrage (Art. 12). To some extent, this discrepancy stems from the elusive concept of ‘affected voter’, as well as absence of references to the procedure which allows to identify a voter as affected and sets forth specific guarantees provided to such voters.

Thus, national legislation provides relevant regulation to hold free parliamentary elections.

Authentic Elections

Authentic elections guarantee real political pluralism and ideological variety, as well as a multi-party system in term of institutional capacity (Clause 2, Art. 9 of the CIS Convention).

According to the Constitution, everyone may enjoy freedom of thought and speech; (Art. 47); everyone has the right to establish any union, including political party and other public organization or become member of existing organizations. Unrestricted activity of all unions is ensured (Art.58); the State

guarantees equality of rights and liberties for everyone, irrespective of membership in political parties and other public organizations. Rights and liberties of an individual or citizen cannot be restricted due to political and social belonging, among other factors (Art. 25); prosecution for criticizing state bodies, state officials, political parties, and other public organizations is prohibited (Art. 57).

Authentic parliamentary elections ensure that candidates are eligible to conduct a comprehensive pre-election campaign (Clause 3 Art. 9, Clause 2 Art. 10 of the CIS Convention; Clause a.2.3.I of the Code of Good Practice in Electoral Matters). According to law, the State shall guarantee citizens and political parties conditions to conduct free pre-election campaigns (Art. 11.1). Other requirements to political parties (bloc of political parties) participating in elections include respect of the right of another political party (bloc of political parties) to freely and independently express their political ideas and views (Art. 49.1.1). Moreover, under law, registered candidates shall respect the rights of other registered candidates to independently and freely disseminate their political ideas and opinions during the election campaign (Art. 71.1.1).

Political and ideological pluralism, as a fundamental criterion for authentic elections, is guaranteed by providing candidates of Milli Mejlis elections with unobstructed and equal access to mass media (Art. 77, 80). Therefore, pre-election programs of registered candidates, political parties, blocs of political parties, materials and speeches distributed through mass media, as well as materials of meetings, including meetings with voters, shall not contain incitements to overthrow the government by force, change the constitutional system by force, or violate the territorial integrity of the country; pre-election campaigns that abuse mass media in order to spread social, race, ethnic, or religious hatred, shall be prohibited (Art. 88).

The date of snap elections to the Milli Mejlis, established by the President of the Azerbaijan Republic, allows candidates to hold a comprehensive election campaign. The principle of authentic elections, as well as election campaigning is also

sustained by adequate deadlines to determine the day of elections or to launch the election campaign as stipulated by law.

Currently, national legislation establishes the requirement for prior approval by authorities to host public events during election campaigns, whereas the Law on Freedom of Assembly requires notification only; it is recommended to eliminate the discrepancy in the future to improve national legislation. Considering that ‘free, non-censored media are crucial to ensure freedom of opinion, expression, and other rights’, whereas any restrictions imposed on websites, blogs or any other systems used to disseminate information via the Internet are allowed strictly to the extent unless they serve the freedom of expression’ (Clauses 13, 43 of the General Comment No. 34 to the International Covenant on Civil and Political Rights, 2011); an extra guarantee of authentic and open elections would be publication of administrative decisions to temporary shutdown particular websites, as well as making available the exhaustive list of such website on the website of a relevant agency, indicating grounds for the shut-down.

Thus, national legislation provides relevant regulation to hold authentic parliamentary elections.

Fair Elections

The principle of fair elections shall provide equal legal conditions to all participants of the election process (Clause 1 Art. 10 of the CIS Convention), as well as exclude election fraud.

The law guarantees equal terms of nomination and registration to candidates by granting them identical scope of rights and duties, regardless of the constituency or other matters. The grounds to refuse registration of a candidate are generally non-discriminatory.

The principle of fair elections, however, excludes unreasonable restrictions of passive right to vote by suspending potential candidates from election campaign. It is therefore recommended to harmonize provisions of the Election Code stipulating that should unintentional mistakes be discovered in documents

indicated in Articles 58.1.2.-58.1.6 of this Code, the relevant election commission should inform the candidate on the matter within 48 hours and propose correction of mistakes (Art. 58.2); as well as provisions claiming that should information submitted by candidates, political parties or blocs of political parties in accordance with Articles 57 and 58 of this Code, be inaccurate or some documents missing, or the number of submitted valid voters' signatures presented in support of a candidate be less than required, the relevant election commission shall notify the candidate, or an authorized representative of the political party or bloc of parties within 24 hours – provided that mistakes and errors can be eliminated from the relevant documents through corrections – and register the candidate after the corrections have been made (Articles 60.2.2; 60.2.4; and 60.4). Here, it is recommended to eliminate elusive language that spreads unclarity ('unintentional mistake'; 'mistakes and errors can be eliminated ... through corrections').

The CIS Convention claims that transparent election funding, which largely ensures equal opportunities for candidates, is most crucial to guarantee fair elections (Art. 12). The terms and the arrangements for election funding extensively comply with democratic standards. Candidates are entitled to use only the finances allocated to their election funds to sustain the election campaign; any other funds are not allowed. These requirements also ensure the equal financial settings for the election campaigns.

According to current legislation, candidates must report on financial allocations for election campaign to the CEC three times: the initial report is provided at registration; the interim report is submitted during the election campaign; and the final report is submitted no later than 10 days after publication of election results). Moreover, the Law on Political Parties imposes extra obligations on political parties to submit annual financial reports to the CEC AR for verification and further publication. The principle of fair elections implies prevention of electoral violations and effective countering of potential abuses, among other things.

The analysis of national regulation shows that it is impregnated with a set of provisions to be clarified regarding monitoring of election financing. Inclusion of legislation on ongoing monitoring of campaign financing, mandatory audit of reports submitted by candidates, political parties, and blocs of political parties, due disclosure of financial statements and verification results, proportionate penalties for failure to comply with financial accounting framework would enhance transparency of campaign financing and improve availability of relevant information to national and international observers.

The principle of fair elections is strongly affected by national legislation regarding repeat voting or elections deemed pending or void. According to the Venice Commission Recommendations, the law should provide options to annul the entire election or merely the results for one constituency or one polling station, as well as to hold a new election in the area concerned (Code of Good Practice in Electoral Matters, Clause II.3.3.e). National legislation complies with these requirements.

Thus, national legislation provides relevant regulation to hold fair parliamentary elections.

Election Administration by Independent Electoral Authorities

Preparation of elections is the responsibility of election commissions – state bodies that function collectively and independently and are represented by the Central Election Commission, as well as constituency and precinct election commissions (Art. 17-18).

The CEC is appointed by the Milli Mejlis so as to ensure that different political entities are proportionately represented. Six CEC members come from a political party with the majority of parliamentary mandates; another group of six members are independent members of parliament who belong to neither political party; the other six CEC members represent minority parties (Art. 24, Clause 3).

Constituency Election Commissions are appointed by the Central Election Commission and shall consist of 9 members,

with each group of three members presenting local branches of relevant political parties (Art. 30).

Precinct Election Commissions of 6 members shall be formed by the relevant Constituency Election Commission, with each group of 2 members nominated by respective members of the Constituency Election Commission (Art. 36). It is local branches of relevant political parties that present Precinct Election Commission candidates to members of the Constituency Election Commission representing political parties, whereas voters or initiative groups of voters present Precinct Election Commission candidates to the Constituency Election Commission members representing non-partisan members of the Milli Mejlis.

The Chair of any election commission shall represent the political party which members are the majority in the Milli Mejlis, whereas each of the two Secretaries shall respectively represent the political parties which members are minority in the Milli Mejlis, as well as independent members (Art.19). Such composition of election commissions allows to represent different political entities, as well as to bring them together with professional commission members (lawyers not in civil service representing non-partisan members of parliament). CEC AR members shall have a university degree.

Registered candidates may appoint a citizen of the Azerbaijan Republic eligible to active suffrage to participate as a representative in a consultative capacity (Art. 21).

Moreover, the independent status of institutions responsible to prepare and hold elections is guaranteed by an exhaustive list of conditions allowing to dismiss members of election commissions (Art. 22, Clauses 3, 4), by incurring criminal or administrative liability (Art. 27, Clause 2; Art. 33, Clause 2; Art. 38, Clause 2), by limiting the number of civil servants among the workforce of agencies within the architecture of election commission (Art. 29, Clause 6), or other.

Thus, national legislation provides relevant regulation allowing election commission to hold parliamentary elections by acting on a peer-to-peer approach and without being directly

accountable to other public authorities (Art. 11, Clause 1 of the CIS Convention).

Resolution of Electoral Disputes

Non-biased and prompt resolution of electoral disputes is an integral part of international electoral standards.

The Azerbaijan Republic has introduced efficient mechanisms of appeal against wrongful actions committed by election participants that are based on the right of voters, candidates, registered candidates, political parties, agents of registered candidates, and observers to file an appeal against decisions, actions, or omissions by entities under concern, within three days of the date of violation acceptance (publication) or commitment. Complaints about violations committed by election commissions are submitted to a superior election commission, whereas decisions, actions, and omissions of the CEC are filed with the Court of Appeal. Unlawful decisions of the election commission under concern shall be cancelled by court ruling.

If violations set forth in the complaint are deemed a crime under the Criminal Code of the Azerbaijan of Republic, the involved election commission shall eliminate the shortcomings and violations of law revealed in the complaint, and may appeal to the prosecutorial agencies for criminal litigation. According to law, the ruling on each complaint received by the election commission during elections, shall be made within 3 days; in case less than 30 days is left prior to the voting day, the ruling shall be produced within 2 days; if the complaint is submitted on the voting day, the court shall rule that very day or the day after the voting day (Art. 112.10). However, in case extra investigation is needed, the relevant election commission shall issue the decision within 3 days from the date of receipt of complaint, or within 2 days if less than 30 days is left until the voting day, or immediately on the Election Day (Art. 112-1.10); this mechanism ensures timely resolution of electoral disputes.

In order to enhance transparency and efficiency of electoral disputes resolution, mandatory notification of election participants on complaints submitted to the CEC is recommended as

reasonable, as well as provision of possibilities to express their opinion regarding matters under consideration.

Judicial review of electoral disputes is set forth in the Administrative Procedure Code of the Azerbaijan Republic (hereinafter APC), stipulating that appeals regarding protection of electoral rights shall be submitted to courts of appeal (Art. 130.1 Administrative Procedure Code). The court shall consider the appeal on infringement of electoral rights and produce a dedicated ruling within 3 days; in case less than 3 days is left before the voting day, the ruling shall be produced within 2 days (but no later than the voting day); whereas in case of appeals submitted on the voting day, the court shall rule immediately that very day or the next day after the voting day (Art. 130.2 APC). Comprehensive judicial ruling on a case shall be provided in writing no later than 24 hours after the resolution announcement, whereas court rulings issued within 30 days prior to or after the voting day – but no later than 18 hours – shall be provided in writing no later than 18 hours in the aftermath of the voting day (Art. 130.4 APC).

A court ruling on a particular case is subject to appeal with the Supreme Court within three days from the date of handover of full text of the decision. The ruling can be challenged by appealing to the Supreme Court within 3 days from handover of the ruling; the appeal shall be considered within 3 days; in case less than 3 days remain before the voting day, the appealed court ruling can be considered within two days (but no later than the voting day); shall the appeal be submitted on or after the voting day, it requires immediate consideration (Art. 130.5 APC).

Violation of the election law implies administrative and criminal liability.

Thus, national legislation provides relevant prerequisites for effective consideration of electoral issues and regained electoral rights.

The produced findings demonstrate that legal regulation regarding preparation and conduct of elections to the Milli

Mejlis of the Azerbaijan Republic corresponds to international standards of democratic elections. National legislation includes regulatory guarantees to ensure open parliamentary elections conducted by independent electoral bodies on the basis of universal, equal, direct suffrage and secret ballot, as well as effective legal protection for all relevant entities.