

# Political Party Regulation in the Republic of Azerbaijan

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in the Republic of Azerbaijan**

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## **Preface**

The author expresses its gratitude to all, who helped in this research- experts, leaders of political parties and diplomats and to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) for the financial support provided to this research project. This support notwithstanding, the opinions and information it contains do not necessarily reflect the policy and position of the OSCE or ODIHR.

## **Political Party Regulation in the Republic of Azerbaijan**

### **Introduction**

The key role of political parties in democratic development has been stressed in a number of international and European documents. According to the OSCE/ODIHR-Venice Commission's Guidelines on Political Party Regulation, "Political parties are a critical means, by which citizens participate in their government and representative democracy is realized."<sup>1</sup> The Guidelines further state that political parties are foundational to a pluralist political society, while listing the four major functions that condition the importance of political parties: 1) they act as collective platforms of individual expression of the rights to association and expression; 2) they are widely utilized as a means for political participation; 3) they ensure an informed and participative electorate, and 4) they serve as a bridge between the executive and legislative branches of power, often to prioritize the legislative agenda within the system of government.<sup>2</sup> As political parties are part of

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<sup>1</sup> Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission (Venice, 15-16 October 2010).

<sup>2</sup> Ibid., p.8.

the expression of the basic right of freedom of association, there is a necessity to provide for their legal protection.

The development of political party regulation requires balancing the necessity to regulate their activities as public actors - on the one hand - and non-interference with freedom of association on the other hand when regulating many aspects of political party activities. This factor explains the wide variety of political party regulations across the OSCE region – from states that do not have any particular legislation on political parties to states with numerous provisions regulating political party activities. A survey of practices across the OSCE region has proved that “extensive regulation may not be necessary for the proper functioning of democracy, signifying that regulations, that minimize legal control of party functions and clearly establish the limits of state authority, may be most appropriate.”<sup>3</sup>

While specific law for a political party is not a requirement for a functioning democracy, in order to ensure stability and relative permanence of provisions on the role and function of political parties in the democratic society, these provisions ideally should be defined in the highest legal order<sup>4</sup>.

The OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation stress the importance of political parties as unique associations and lists a number of general principles which the states should be guided by in relation to political parties. It refers to the European Court of Human Rights which recognizes the political parties “as vital to the functioning of democracy”<sup>5</sup> and to the Parliamentary Assembly of the Council of Europe, which defines parties “a key element of electoral competition” and “a crucial linking mechanism between the individual and the state by integrating groups and individuals into the political process”<sup>6</sup> Those guiding principles include : presumption in favor of political party formation and non-dissolution, state’s duty to protect free association for Political parties, commitment to non-violence, legality and proportionality<sup>7</sup>

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<sup>3</sup> Ibid., p.7.

<sup>4</sup> CDL-AD(2010)024 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission Adopted by the Venice Commission at its 84d Plenary Session (Venice 15-16 October 2010)

<sup>5</sup> Ibid. para 42

<sup>6</sup> Ibid.

<sup>7</sup> CDL-AD(2010)024 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission Adopted by the Venice Commission at its 84d Plenary Session (Venice 15-16 October 2010) section 4.

The process of political party formation in Azerbaijan, which started in the second half of the 19<sup>th</sup> century and was interrupted by the invasion of the Bolsheviks in 1920, was renewed at the end of the 1980s and early 1990s with the end of the Soviet Union. Currently, there are around 54 registered political parties in the country, although politics in Azerbaijan is dominated by the ruling party (The New Azerbaijan Party or *YAP*) with only marginal space for the functioning of opposition. The majority of the parties are small with vague programmatic differences between them; they are known mainly by their leaders rather than by their platforms. While the main legislative framework of political party activities in Azerbaijan is included in the Law on Political Parties, which has been on the whole positively assessed by two last opinions of the Venice Commission,<sup>8</sup> there is still much effort needed in order to bring the framework of political party activities in accordance with the most recent international and European good practices and standards. Such effort would boost the development of the multiparty system and address inequalities in the application of the law to the parties depending on their stance vis-à-vis official power. Along with the major ruling party *YAP* and the opposition parties such as *Musavat*,<sup>9</sup> *Popular Front*, the *Liberal Party*, and the *Democratic Party*, there are a number of (smaller) pro-government parties (such as the *Ana Vetən Party* and the *Social Prosperity Party*), and the “constructive” opposition (such as the *Great Creation Party*, the *United Azerbaijan Popular Front Party*, and the *Democratic Reforms Party*).

Political party formation has been influenced by the 2002 replacement of the proportional system of elections with a majoritarian system, the restrictive legal framework concerning sources of party financing, and a constitutional design that gives significant powers to the executive. The amendment to the Constitution, adopted through national referendum<sup>10</sup> on 18 March 2009, cancelled the two-term

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<sup>8</sup> CDL-AD (2004)025 Opinion on the Law on Political Parties of the Republic of Azerbaijan (, Adopted by the Venice Commission at its 59<sup>th</sup> Plenary Session (Venice, 18-19<sup>th</sup> of June, 2004). and CDL-AD(2011)046 Opinion on the Draft Law on Amendments to the Law on Political Parties of the Republic of Azerbaijan Adopted by Venice Commission at its 89<sup>th</sup> Plenary Session (Venice, 16-17 December.2011).

<sup>9</sup> *Musavat* (Equality) is a historic party, founded in 1911. The restoration congress took place in 1992.

<sup>10</sup> According to official sources (The Informational Center “Elections” at: [http://www.infocenter.gov.az/v3/sesverme\\_2009.php](http://www.infocenter.gov.az/v3/sesverme_2009.php)), the turnout for the referendum was 71.08% and the percentage of positive votes increased from 87.14% to 91.76%. However, the Norwegian Helsinki Committee issued a statement that stressed the referendum took place in an atmosphere of voter intimidation, state coercion of people to vote, and absence of public debates. (Statement on the Referendum in the Republic of Azerbaijan, Thursday 19 March 2009, by the Norwegian Helsinki Committee, available at: <http://humanrightshouse.org/Articles/10357.html>).

limit for the office of the president<sup>11</sup> and further strengthened the executive power over the parliament. For the first time, major opposition parties were left out of the parliament in 2010, and it is expected that the cancellation of the term limit will continue to affect parliamentary activity and the free formation of political parties.

The most recent (June 2010) amendments to the Election Code also reduced the election and campaign periods and abolished state financing of candidates. Politically, the flow of significant revenue from the state-owned oil and gas industry, in particular in the early 2000s, in the absence of mature democratic institutions was a tool for authorities to consolidate the system of political patronage and cooptation, which undermined the competitive political environment. Against the background of increasing domination by the ruling party, the two largest center-right opposition parties with liberal democratic platforms - Musavat<sup>12</sup> and The Popular Front, were not elected to the Parliament after the November 2010 elections.<sup>13</sup>

At the level of official statements in Azerbaijan, stress has recently been placed on the importance of political pluralism in democratic development in the country. For example, at the first session of the Fourth Convention of the Parliament (National Assembly) on 29 November 2010, the President of the Republic of Azerbaijan Ilham Aliyev said, “The issue of improvement of the political system is to be ensured by all political forces. I wish that all political forces should be strengthened further in Azerbaijan. We need a strong political system. Democratic discussions, debates and exchange of views, pluralism trends and free media should be fostered further in Azerbaijan.”<sup>14</sup>

The major legal framework for the functioning of political parties is the Constitution adopted in 1995 and the Law on Political Parties, adopted in 1992 and amended on numerous occasions. Other laws, such as the Law on Freedom of Assembly and the Law on Media, also have had an impact on the implementation of political party activities.

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<sup>11</sup> The amendment on removal of the two-term limit and position of President was called by the Venice Commission “controversial” and “a step back in terms of democratic achievement.” See: Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan, European Commission for Democracy Through Law (Venice Commission) Opinion No. 518/2008, 16 March 2009, p. 5- 6.

<sup>12</sup> Musavat Party is a member of the European Liberal-Democratic Reform Party since 2007.

<sup>13</sup> See Table 2 on the composition of the Milli Mejlis (National Assembly) of the Republic of Azerbaijan of this report for the breakdown of the current Parliament.

<sup>14</sup> Speech of Ilham Aliyev at the first session of the Fourth Convention of the National Assembly of the Republic of Azerbaijan, Nov. 29, 2010, available at: <http://www.president.az/articles/1183?locale=en>.

This report analyses the legal framework for and political environment of Azerbaijani political party formation and functioning. The report also covers the definition of a political party, the differences in legal status as compared to other associations and organizations, the structure of parties, their funding, and the participation of women in elections and political parties.

## **1. The Definition of a Political Party**

### **1.1. Legal definition**

In Azerbaijan, political parties and their activities are governed by the Law on Political Parties of 3 June 1992 and the Elections Code (hereinafter EC) of 27 May 2003. The most recent amendments to the EC concerning the rules on election campaign financing were made by Law No. 1035-IIIQ, "Amendments to the Election Code of the Republic of Azerbaijan," which was adopted on 22 June 2010 and entered into force on 18 July 2010.

The Azerbaijan Constitution states that every citizen of the country has the right to form a party, but does not contain any definition of a political party. Paragraph 2 of Article 58 of the 1995 Azerbaijan Constitution, *Right to Association*, states that "Everyone has a right to set up any organization, including a political party, professional union and any other public association or to enter an already existing association. The independent activity of all associations is guaranteed."

There is one restriction on the activities of parties (associations), reflected in Paragraph 4 of the same article in the Constitution: "the activities of associations which pursue the aim of overthrowing the legitimate State power in the whole territory of Azerbaijan Republic or any part of it is prohibited." In such cases, when the activities of associations violate the Constitution and laws they "can be curtailed solely by court order."

The first definition of a political party was introduced in the Law on Political Parties of 1992, article 1 of which states that a political party is an "association of citizens of the Republic of Azerbaijan, pursuing common political ideas and aims and participating in the political life of the country." The same article of the law specifies the function of the parties: "Political parties, taking as a basis their

functions and aims compatible with the Constitution and Laws of the Republic of Azerbaijan shall take an active part in the formation of the political will of the citizens of the Republic of Azerbaijan.”

## **1.2 The legal functions of political parties**

The law treats political parties differently from other organizations. There are two separate laws regulating NGOs and Political Parties. The Article 2 (paragraph 2.4) of the Law on Non-governmental Organizations (Public Organizations and Foundations) states that “a non-governmental organization may not participate in presidential, parliamentary and municipal elections of the Azerbaijan Republic and it may not provide financial and any other material assistance to political parties.”

The law on NGOs also allows the establishment of national, international, regional, and local associations, unlike political parties that cannot be regional or local (only operating at a national level). For instance, the laws do not allow even the Nakhichevan region, which has a high level of administrative autonomy, the right to create regional political parties. Foreigners and stateless persons may become members of NGOs operating in Azerbaijan, but not members of political parties. There is no restriction on age for membership in NGOs, but there is an age requirement of 18 years for the founders of NGOs and 16 years for the founders of youth organizations. In contrast, only citizens of Azerbaijan who have reached 18 years may be members of a political party.

Article 10 of the Law on NGOs allows both individual and institutional membership, stating that “any individual and legal entity (except for state and local government bodies) may become a member of a public organization.” The Law on NGOs is more specific than the Law on Political Parties because it includes provisions not only on their creation and liquidation, but also on re-establishment. Similarly, there are more specific requirements about the regulation of the structure of NGOs. The Law on NGOs provides for a supreme management body, which is supposed to be convened not less than once a year upon the initiative of the executive body of the public organization, by one of its founders, or by 1/3 of its members. The law also defines the function of the general meeting as “to follow objectives [the organization] is concerned with” (Article 25, *Principles*, section 5). The Law on NGOs is also specific in listing the powers of the general meeting, the rules for convening and conducting a general meeting, the procedure for adopting decisions, and the statute of the executive body of the NGO.

Political parties are also treated differently as compared to other organizations in regards to financing. While NGOs can receive foreign or state grants, such financing is prohibited for parties. Article 17 of the Law on Political Parties states that “the activities of political parties shall be financed at the expense of these parties without allocation of funds from the State budget, except for the financing of the election campaigns in accordance with the Election Code of the Republic of Azerbaijan. The financing of the activities of political parties by foreign States as well as by legal and natural persons of foreign states shall be prohibited.”

Both NGOs and political parties, if they are registered, can get tax privileges. As non-commercial organizations, they are exempt from profit taxes on grants, membership fees, and donations, as provided by the tax code of Azerbaijan.<sup>15</sup> Article 19 of the Law on Political Parties mentions political organizations other than parties, including “mass movements.” However, there is no definition or special rules established for mass movements in the law. As parties are only recognized at the national level, there are also no regulations for provincial or regional parties.

**Table 1**

**Comparison of the Legal Framework for NGOs and Political Parties**

	<b>NGOs</b> (public organizations and foundations)	<b>Political Parties</b>
<b>Objectives</b>	A Public organization is not aimed at earning profits or distributing generated profits among its members. It is created on the initiative of several individuals and /or legal entities having common interests for purposes defined in its charter and founding documents.	Parties take an active part in the formation of the political will of the citizens of the Republic of Azerbaijan. They take part in a democratic way in the elections of President, parliament, and other elective bodies, and in the formation of the bodies of the executive power.
<b>Scope</b>	International, national, regional, and local.	National
<b>Participation</b>	Founders, members, and assistants	Members (The Law on Political

<sup>15</sup> Section 106.1.2., Tax Code of the Republic of Azerbaijan of 11 July 2000.

		Parties mentions only once the “initiators of the establishing of a party” in the context of the founding congress, but not as separate from the concept of members.)
<b>Foundation</b>	Legal entities (except for state and local government bodies) and individuals 18 and older (16 years for youth groups) can be founders, including foreign citizens and stateless persons.	As there is no legal distinction in the Law on Political Parties between members and founders the parties can be founded only by citizens of the Republic of Azerbaijan.
<b>Membership</b>	Any individual and legal entity (except for state and local government bodies) in the Azerbaijan Republic may become a member of a public organization.	Citizens of Azerbaijan, who have 1. not reached the age of 18 and do not possess legal capacity, and 2. presidents, vice-presidents and judges of all courts, Ombudsman, servicemen, staff of public prosecutors office, justice, internal affairs, national security, frontier guards, customs, finances, taxes, State owned press, the leadership and creative staff of the State TV and Radio Broadcasting Company of the Republic of Azerbaijan and religious figures <b>cannot</b> be members of the political parties.
<b>Recognition through registration</b>	Obligatory	Obligatory
<b>State Authority responsible for Registration</b>	Ministry of Justice	Ministry of Justice
<b>Deadline for</b>	Not determined	Not determined

<b>registration/refusal of registration</b>		
<b>Obligation to create local organization</b>	No	No
<b>Programme</b>	No	No
<b>Right to nominate candidates for national and local elections</b>	A non-governmental organization may not participate in presidential, parliamentary, and municipal elections.	Yes
<b>Right to establish enterprises</b>	Yes, but it may carry out entrepreneurship activity that is aimed only at reaching objectives of creation of that organization without distribution of generated income among founders (members)	No (only media and printing houses)
<b>Right to have free access to state media during elections</b>	No	Yes
<b>Right to sell goods and services</b>	Yes, but shall be accepted as types of such activities corresponding to objectives of creation of a non-governmental organization.	Besides the income from arrangements, circulation of press outlets, articles, and other similar lucrative activities, there is an unspecified category of "other proceeds."
<b>Prohibition of donations from foreign countries and organizations, foreign citizens, persons without citizenship, government and local self government bodies, state and municipal enterprises, charitable and religious organizations, anonymous donations, trade unions, and mass movements</b>	No	Yes

### 1.2.1 Official Recognition of Political Parties

The liberalization of the perestroika era and outbreak of the Nagorno Karabagh conflict in 1988 promoted socio-political mobilization in Azerbaijan. This gave rise to one of the most powerful movements in the post-Soviet space, the Popular Front of Azerbaijan, established in 1989, which had its roots in the intellectual circles of the Academy of Sciences and the dissident movement of the Soviet period. The organization of the Popular Front led a national liberation movement that aimed both to obtain freedom from Moscow control and communists on the one hand, as well as to tackle the quickly developing insecurity related to the conflict on the other. These particular conditions determined the course of political party formation by 1990, when the ideological debates of visions of Azerbaijan's future led to a split in the Popular Front Movement. The split was on the basis of the priorities and methods for consolidating Azerbaijan's independence and security. Party formation was along the lines of ideological platforms with major divisions on whether a liberal or nationalist agenda should be first in the movement's (party's) programmes. Therefore, the split led to the creation of a wide variety of political groups, from the social-democrats on the left (leaders Araz Alizade and Zardusht Ali-zade), through center right – the historical party of Musavat (Equality) to the right – The Azerbaijan National Independence Party (Ehtibar Mammedov).<sup>16</sup>

At this stage, the power of social movements (unlike distribution of resources, which became important at later stages) played a key role in the political developments of Azerbaijan, creating favourable grounds for party formation. Although the emerging parties did share common legacies from the former Soviet Union, when the individual popularity of the leaders played a significant role in political mobilization and recruitment of party members, they were formed predominantly on the basis of ideology rather than on the clan networks or material interests.

The collapse of the Soviet Union in 1991 and the independence of Azerbaijan was followed by a period of crisis in the country due to the perceived inconsistent course on liberation from dependence on Moscow of the first post-Soviet president of the republic Ayaz Mutalibov (in office 1991-1992). In 1992, there was a peaceful

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<sup>16</sup> Parties on both the left and the right in Azerbaijan have had the purpose of establishing democracy and the rule of law in the country. However, besides the difference in the vision of transition orientations, the major difference between the left and right parties were reflected in vision of the type of state. The social-democrats were advocating a form of “welfare state” (Article 1 of the Program of the Social-Democratic Party of 1995), where the “interference of the state in the economy is limited by the macroeconomic regulation and social protection, which serve personal and society freedom,” while parties on the right, for instance the Azerbaijan National Independence Party, advocated for minimal involvement of the state in the economy.

takeover by the Popular Front in the first democratic presidential elections (with a high turnout of 76%). The elected leader Abulfaz Elchibey (in office 1992-1993), a leader of the Popular Front and a former dissident, undertook reforms, such as adoption of laws, directed towards a real independence of courts from the executive power, development of the State anti-monopoly policy, creation of the State Committee on Support for Entrepreneurship/. His liberal rule was first of all reflected in the legal environment of political party and social movement formation. Based on the first Law on Political Parties, adopted in 1992 by the parliament, the practice of registration of parties and NGOs was facilitated and the authorities promoted their establishment by providing free offices and other facilities (including for such NGOs like the Green Movement of Azerbaijan). During the Popular Front rule numerous parties and NGOs were registered.<sup>17</sup>

In 1993, after the Popular Front government was overthrown by Colonel Suret Huseynov, and after the arrival to power of the former first secretary of the Communist Party of the Azerbaijan Soviet Republic, Heydar Aliyev, the space for party formation and political activities began to narrow. This was caused by the nature of new regime that combined greater executive power with the old Soviet elements of political patronage and extensive use of informal clan and regional networks. The new leader consolidated power internally, signed a ceasefire agreement with Armenia, and signed a contract with a consortium of 11 foreign companies in 1994, in which Western companies constituted a majority, including BP and leading US companies. In a unique move, as compared to the other oil producing states, the so-called “contract of the century,” a term widely repeated by Azerbaijan’s presidents and foreign officials, was given the force of a separate law through adoption in the parliament. The consequence of such legal protection for a contract was a strong incentive for external actors to secure stability of the regime, because changing the country’s elite risks re-distribution of resources and potential instability.

At this period, several parties were denied registration, such as the Azerbaijan Democratic Party (ADP), Vahdat, People’s Freedom, National Democratic Party, and Chagdash Turan with questionable motives.<sup>18</sup> The ODIHR report also notes that appeals to the court in case of a denial of registration has proved not to be an

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<sup>17</sup> Allahyarova and Mammadov, “The Azerbaijan Republic: 1991-2001,” Baku, 2001 p.42: “In Mid 1993, there were about 30 political parties, associations and movements in Azerbaijan.”

<sup>18</sup> Presidential Elections in the Republic of Azerbaijan, 11 October 1998, OSCE/ODIHR Election Observation Report, p.10

effective remedy - although after the cancellation of its registration before the parliamentary elections on 2 September 1995, the ADP appealed to the Supreme Court and won the case<sup>19</sup>, the Ministry of Justice still refused to comply. The Ministry of Justice in execution of the decision of the Supreme Court, reviewed the case on 31 October 1997 and retained its previous decision of the rejection of registration of the Party's Charter.<sup>20</sup> The Azerbaijan Democratic Party was reregistered by decision of Constitutional Court only in 2000 after a long appeal process.

### 1.2.2 Registration

According to article 14 of the Law on Political Parties of 1992, a party should be registered at the national level. The registration of commercial and non-commercial legal entities is carried out by the Ministry of Justice. This includes registration of political parties. Although as a result of the later amendments to the Law on Political Parties, the "Ministry of Justice" was replaced by the term "relevant executive body," this did not change the substance of the provision for the agency responsible for party registration. A number of amendments were also made to part 4 on the relations between the parties and the state, including in Article 13 on the *Rights and obligations of the state vis-à-vis political parties*, where the obligations of the state on guaranteeing the rights and legitimate interests of the parties are listed. To be registered, a party should conform to the principles and conditions of establishment and functioning as stipulated in the respective law. Article 3 of the Law on Political Parties reflects the principles of the party's establishment and functioning, such as freedom of association, voluntariness, the equality of rights of their members, self – government, legality, and publicity. The conditions for the establishment of political parties, as described in Article 4 of the same law, include their creation upon territorial criterion and non-interference of the primary organizational committees and other organizational structures of political parties in the State bodies of Azerbaijan Republic.

Section 4 of the Law on Political Parties stipulates that in order to found a political party its initiators should convene a constituent congress, or a general meeting, adopt a charter and set up the leading bodies. The Charter should indicate inter alia,

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<sup>19</sup> Ibid., see also annex 5.

<sup>20</sup> The decree of the Collegium of the Ministry of Justice of the Republic of Azerbaijan on rejection of state registration of the Azerbaijan Democratic Party of 7 November 1997., signed by the Sudaba Hasanova.

the name, aims and functions of the party, its structure, and its sources of funding and other property. The establishment and functioning of parties, “which purpose or method of operation is to overthrow or change forcibly the constitutional order of Azerbaijan or to violate its territorial integrity, to advocate for war, violence and brutality, to instigate racial, national and religious hatred, to perpetrate other acts contradictory to the constitutional order of Azerbaijan and incompatible with its international legal obligations” are prohibited.

The Venice Commission<sup>21</sup> has commented on two restrictions, contained in the law. Based on the “Guidelines on legislation on political parties: Some Specific Issues” (CDL-AD (2004)007rev), the Commission stressed that general exclusion of foreign citizens and stateless persons from membership in political parties is not justified. The Venice Commission reiterated its opinion on this matter commenting on the draft law on amendments to the Law on Political Parties of the Republic of Azerbaijan, noting that in this draft law the earlier recommendation was not taken into account. The Commission took note of the explanation of the authorities that such participation was not possible because of the specific geographic position of the country, but stressed that Azerbaijan could continue its work aimed at finding a possible way of meeting this recommendation<sup>22</sup>.

The other limitation in referring to the parties “whose purpose is to overthrow or change forcibly the constitutional order of Azerbaijan Republic...” was found by the Commission to be “unclear” and with the potential to be in contradiction with Articles 10 and 11 of the European Convention of Human Rights. These ECHR articles permit people to advocate changes to the constitutions and institutions of states, even secessions of state, and the organization of political parties for this purpose, but on two conditions: that the methods must be in all respects legal and democratic and that the change itself must be compatible with democratic principles. The consistency with the respective articles of the European convention would depend on the meaning the courts of Azerbaijan Republic would give in their jurisprudence to the definitions in this provision, further comments the Venice Commission.

There are states in Europe, such as Germany, Greece or Switzerland, which do not require registration of political parties. However, the proper functioning of democracy

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<sup>21</sup> Opinion on the Law on Political Parties of the Republic of Azerbaijan (CDL-AD(2004)025, Adopted by the Venice commission at its 59<sup>th</sup> Plenary Session, Venice, 18-19 of June, 2004).

<sup>22</sup> CDL-AD(2011)046, Opinion on the Draft Law on Amendments to the Law on Political Parties of the Republic of Azerbaijan adopted by the Venice Commission at its 89<sup>th</sup> Plenary Session Venice (16-17 December 2011), para12.

in these states proves that requirements for party registration are not necessary for democratic society<sup>23</sup>.

### **1.2.3 Requirements for membership**

According to the Article 4 of the existing Law on Political Parties, the minimum membership requirement for registration is 1000 citizens of Azerbaijan.

Article 4 of the Law on Political Parties prohibits foreign states from creating political parties, as well as their branches and subsidiaries, on the territory of Azerbaijan. According to the Venice Commission, this provision is reasonable, but care should be exercised that it is not abused in order to prevent the establishment or functioning of political parties representing minority ethnic or national groups.<sup>24</sup>

The Venice Commission has also commented on Article 4 of the Law on Political Parties which states “that parties shall be constituted upon the territorial criterion,” which includes a prohibition of a party’s primary organizations’ functioning in State agencies as “unclear” and interpreted it as a presumed intention of the government “to prevent a political party from exercising a covert influence at the workplace.”<sup>25</sup>

Article 5 describes the functions of political parties, including influencing the formation of public opinion pursuant to their chapters, encouraging the political activity of their members, and putting forward candidates for elected State bodies. Political parties can also influence the activities of the legislative and executive of the Republic of Azerbaijan in accordance with their chapters and exert influence on the formation of the domestic and foreign policy of the Republic of Azerbaijan by elaborating political and social programs.

### **1.2.4. Membership Ineligibility**

Article 6 of the Law on Political Parties includes provisions on the organizational attributes of political parties that must be included in party charters. There are also requirements in Article 8 of the Law for registered membership and conditions:

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<sup>23</sup> Prohibition of Political Parties and Analogous Measures, Report Adopted by the Venice Commission at its 35<sup>th</sup> Plenary Session ( Venice, 12-13 June 1998).

<sup>24</sup> CDL-AD(2004)025 Opinion on the Law on Political Parties of the Republic of Azerbaijan, Adopted by the Venice commission at its 59<sup>th</sup> Plenary Session, Venice, 18-19 of June, 2004). Para9

<sup>25</sup> CDL-AD(2004)025 Opinion on the Law on Political Parties of the Republic of Azerbaijan (, Adopted by the Venice commission at its 59<sup>th</sup> Plenary Session, Venice, 18-19 of June, 2004). Para 10

“Members shall be those people, who are citizens of Azerbaijan and reached age 18, joined the party voluntarily, accepted its charter and programme, and possess legal capacity.” The law also stipulates conflicts of interests and prohibits political party membership for civil servants. Among the most substantial amendments passed in the last few years to the 1992 Law on Political Parties were to article 8, *Membership of the Political Party*. Paragraph 3 was added to provide non-involvement in political activities of the state staff and bureaucracy).

According to the third paragraph of Article 8, the following categories of people cannot be members of political parties: “The President of the Republic of Azerbaijan, presidents, vice-presidents and judges of all the courts of Azerbaijan Republic, Ombudsman/woman, servicemen, the staff of the organs of public prosecutor’s office, justice, internal affairs, national security, frontier guards, customs, finance, taxes, State-owned press, except for the technical and service staff of these organs, the leadership and creative staff of the State TV and Radio broadcasting Company of the Republic of Azerbaijan and religious figures...” The Venice Commission found this list too extensive, concluding that while such provision is necessary for certain categories such as Ombudsman/women, or judiciary, with regard to others the situation is more problematic.<sup>26</sup> The Venice Commission found, for instance, while the prohibition on engaging in political activities for the senior prosecutors is justified, its extension to the staff of the prosecutor’s office contradicts Article 6 of the Recommendation (2000) 19 of the Committee of Ministers of the Council of Europe, which provides that states should take measures to ensure that public prosecutors have an effective right to freedom of expression and assembly, have the right to form and join lawful organizations and attend their meetings in their private capacity.<sup>27</sup>

There are no rules regulating the kinds of parties that can be registered, on account of the lack of differentiation between types of parties.

The benefits of being registered are reflected in the provision of Article 14 that “as of the date of obtaining the state registration, a political party shall be regarded as a legal person as provided for in the legislation of the Azerbaijan Republic.” Registered parties have the right to participate in elections, to have their seal, property, and a bank account. Article 20 of the Law on Political Parties states that

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<sup>26</sup> CDL-AD(2004)025 Opinion on the Law on Political Parties of the Republic of Azerbaijan, Adopted by the Venice commission at its 59<sup>th</sup> Plenary Session (Venice, 18-19 June, 2004).para15

<sup>27</sup> CDL-AD(2004)025 Opinion on the Law on Political Parties of the Republic of Azerbaijan, Adopted by the Venice commission at its 59<sup>th</sup> Plenary Session (Venice, 18-19 June, 2004).para16

parties can own premises, equipment, publishing and printing houses, means of transport, as well as other property necessary to implement the tasks set forth in the charter. Parties can also use the premises and other property in accordance with the contracts on debts or lease concluded with other persons. The ownership of parties, however, cannot contain the land, industrial enterprises, production unions and cooperatives.

According to Article 4 of the Law on Political Parties, the parties are constituted on a territorial basis. This means their creation is through a geographical branch structure rather than on the working location - such as the office or enterprise location. The creation of a political party, as stipulated in the second paragraph of Article 4 of Chapter 2 of the Law, requires convocation of the constituent congress or a general meeting, adoption of a charter, and establishment of leading bodies.

According to Article 6 of the Law on Political Parties, the charter must include the following elements:

- Name, aims, and functions of the party;
- The structure of the political party;
- The conditions and procedures for joining and leaving the party;
- The rights and duties of the members of the party;
- Disciplinary measures and sanctions not contradicting the laws of country concerning the members and branches;
- The powers and rules of the organization of managing bodies of the party and the terms in office;
- Procedures for the adoption and implementation of decisions and forms of supervision;
- Conditions, forms, and norms of calling meetings of the party members and their representatives, sources of funding, and other property of the political party;
- The procedures for amending the party's charter; and
- The procedures for terminating the party's activity and allocation of its property.

To be registered, a party within one month from the date of the adoption of its charter should submit to the Ministry of Justice:

- An application containing the signatures of the members of its management bodies and their addresses;
- The founding charter;
- The minutes of the constituent congress that adopted the charter; and
- A document attesting the number of members in the party

As a result of the amendments to the Law on Political Parties, article 14 included an addition that a political party has the right to file a complaint (in case registration is rejected) either administratively or to the Court of Appeal.

### **1.2.5. Rejection of registration .**

In addition to paragraph IV of Article 58 of the Constitution, which prohibits activities of associations pursuing overthrow of the legitimate State power in the whole territory of the Azerbaijan Republic or in any part of it, according to Article 14 of the Law on Political Parties, state registration shall be refused if the charter of a political party is inconsistent with Articles 3, 4 and 5 of the Law,<sup>28</sup> the party's founding documents are not in compliance with the country's laws, or if the other party is already registered under the same name. The Ministry of Justice according to this article may demand the governing bodies of a registered political party to present their decisions and request explanations about issues related to the observance of the party charter.

If registration is refused, written information should be given to the applicants with the indication of the articles of the law, with which that the party's charter is inconsistent. The party has a right to appeal to the courts (Court of Appeal).

The OSCE /ODIHR Guidelines of Political Party Regulations state, that "deadlines for deciding registration applications should be reasonably short to ensure realization of the right of individuals to associate"<sup>29</sup> The first version of the Law on Political Parties of 1992 had an important provision about the time frame within which the Ministry of Justice had to issue a decision on registration, i.e. one month.

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<sup>28</sup> Articles 3, 4 and 5 of the Law on Political Parties describe the principles, conditions, and forms of functioning of political parties.

<sup>29</sup> CDL-AD (2010) 024 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission ( adopted by the Venice Commission at its 84<sup>th</sup> Plenary Session ( Venice 15-16 October, 2010).para.69

If the party was denied registration, it could file a complaint in the Court of Appeal. However, the new authorities abolished this time limit for consideration of a political party's application for registration<sup>30</sup>, when the Law on State Registration of the Legal Entities was adopted.<sup>31</sup> The paragraph 8.1 of the Law on State Registration and State Registry of Legal Entities states, that "state registration of the non-profit structures wishing to obtain the status of legal entity .... Is performed as a rule no later than within 40 days"<sup>32</sup>. However, the application of this Law to the registration of political parties was voluntary, as the court case in annex 4 shows.

During the re-registration of political parties in 1995, the Ministry of Justice found that some provisions of the Communist party's charter were in contradiction with the Constitution of the Republic of Azerbaijan, so the party's registration was sent for evaluation to the Supreme Court, the collegium of which in August 1995 decided to liquidate the party. However, on 18 September 1995, the Supreme Court Presidium announced that it had reversed its decision and re-instated the Communist party with full rights to participate in elections.

The Boz gurd party was registered by Ministry of Justice on 29 March 1994. The day of the arrest of the party leader Isgandar Hamidov, 17 March 1995, coincided with the suppression of the "March attempt of the coup d'états." Although the criminal case no. 20732 was opened against Isgandar Hamidov on two charges – Abuse of Power (misuse of duty for illegal liberation of 701 criminals (article 255 b) and Large Scale misappropriation of a substantial amount of the state property - 400, 000 US dollars (Article 88, part 1) of the Penal Code of the Republic of Azerbaijan, abolishment of the registration of the political party on 31 March 1995 took place against the background of the official statements on involvement of the Boz gurd party in the attempted coup. The abolishment of its registration was confirmed in August 1995. In 2004 after the release from prison of its leader in 2003, the Party Congress changed the name of the party from Boz gurd to the 'Azerbaijan National Democratic Party,' and the party applied to the Ministry of Justice for registration. Isgandar Hamidov appealed in December 2004 to the court after he did not receive a response from the Ministry of Justice in 2004 for more than seven months. After the leader did not get a response from the Sabayil district court, Court of Appeals, Supreme Court and Constitutional Court, he appealed to the European Court of Human Rights. The party was registered on 24 December 2008 only after the resignation of Isgandar Hamidov as party head in April 2008.

The Islamic Party was founded in August 1991 and granted official registration in 1992. The registration was then repealed in July 1995. It was preceded by the speech of then speaker of the Parliament Rasul Guliyev in May 1995, stressing that religious people cannot be involved in politics and condemning the Islamic Party as damaging the secular image of Azerbaijan. In 1996, three members of the party, including then leader Haci Alacram Aliyev, were arrested on charges of espionage for Iran. In summer 1997, after the convocation of the Party Congress, documents were re-submitted to the Ministry of Justice, which again rejected registration, on the basis that the name of the party -Islamic- reflects its foundation on the religious principle, which is prohibited by Law on Political Parties.

<sup>30</sup> Article 14 of the Law on Political Parties was taken out on 5 November 1996 # 188-IQD.

<sup>31</sup> Law of Azerbaijan Republic on Registration of Legal Entities of 6 February 1996.

<sup>32</sup> Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities of 12 December 2003, para.8.1.

The new Draft Law on Political Parties, submitted by the Azerbaijani government to the review by the Venice Commission in 2011 has removed the list of the requirements to the documents to be lodged with registration from the article 14. *State Registration of Political Parties* reportedly to be contained in the law “On State Registration and State Registry of Legal Persons”<sup>33</sup>

The practical result has been the slow consideration of registration documents by the Ministry. The registration documents of the Green Party (founded in 2006), for example, were reviewed over the course of two years, after which the registration was refused (see annex 3).

In June 1995, on the eve of the parliamentary elections of 12 November the Parliament (Milli Mejlis) instructed the Ministry of Justice to undertake a “clarification” of the juridical status of all political parties and ordered their re-registration. According to NDI, as a result, government officials announced that 18 parties were denied registration.<sup>34</sup>

#### **1.2.6. Liquidation of a political party**

Article 16 stipulates the conditions and procedures for liquidation of a party by the State. The right to move to have a party liquidated belongs to the Ministry of Justice, but the decision lies with the courts of common jurisdiction. Violations of paragraph 4 of Article 4 (regarding prohibition of parties with the purpose or method of operation to overthrow or change forcibly the constitutional order of the Republic of Azerbaijan or to violate its territorial integrity, to advocate for war, violence or brutality, to instigate racial, national and religious hatred, to perpetrate other acts contradictory to the Constitutional order of the Republic of Azerbaijan and incompatible with its international obligations) lead to a political party’s liquidation by court decision—most likely a Court of Appeals, although not specified in the law. While a party’s acts that deviate from the aims and tasks listed in its charter or acts that run counter to the laws would lead to a warning from the Ministry of Justice, the continuation of such acts will lead to the liquidation of the party by court order.

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<sup>33</sup> CDL-AD(2011) 046. Opinion on the Draft Law on Amendments to the Law on Political Parties of the Republic of Azerbaijan Venice Commission, (Strasbourg 19 December 2011, Opinion No. 631/2011 para.33.

<sup>34</sup> The November 1995 Parliamentary Election. Republic of Azerbaijan. Pre-Election Report. National Democratic Institute for International Affairs (NDI), October 31, 1995, p.12.

One of the main guidelines, defined by the Venice Commission in regards of prohibition of political parties is that” prohibition or enforced dissolution of parties may only be justified in the case of parties, which advocate use of violence or use violence as a political means to overthrow the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the constitution”<sup>35</sup>,

An important principle, contained in the Guidelines on Political Party Regulation is Presumption of Political Party Formation and non-dissolution, which clearly states, that the law should not forbid a political party from advocating a change to the constitutional order of the state<sup>36</sup>.

The principle of State’s duty to Protect Free Association for Political Parties, contains the obligation of state in regards freedom of association and formation of political parties, which extends to the cases where a party espouses ideas which are unpopular, so the state should ensure that all parties, including those which represent unpopular ideas, are able to compete with one another on an equal basis<sup>37</sup>.

In its opinion on the Law on Political Parties in 2004 the Venice Commission made an interesting observation stating that:

“There is a further procedure whereby a political party may be liquidated which involves firstly, the issue of warning by the Ministry of Justice to a party which “commits an act, that deviates from the aims and tasks determined in its charter or runs counter to the existing legislation, followed by an application to court by the Ministry to liquidate the party if it again commits the acts referred to (Articles 15.3, 16.2 and 16.3)” While the necessity for a court decision on liquidation is to be welcomed, the absence of any sanction other than liquidation poses a problem, since the provisions in question appear capable of being invoked even for minor breaches of the charter or legislation. It would be desirable to provide for sanctions short of liquidation and to provide that liquidation was to apply only in cases of serious and deliberate violation of the charter or legislation where no other sanction was appropriate.”<sup>38</sup>

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<sup>35</sup> CDL-INF (2000)1 Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, Adopted by the Venice Commission at its 41<sup>st</sup> plenary session ( Venice 1011 December 1999), p.3.

<sup>36</sup> Ibid. para 43.

<sup>37</sup> Ibid. para 46

<sup>38</sup> CDL-AD(2204)025 Opinion on the Law on Political Parties of the Republic of Azerbaijan, Adopted by the Venice commission at its 59<sup>th</sup> Plenary Session (Venice, 18-19 of June, 2004) para. 20

There is no mention in the Law on Political Parties of the legal consequences of de-registration, but logically de-registration would mean loss of the right to act officially including deprivation of the right to participate in elections, to have a party seal, bank account, property, and tax privileges.

### **1.2.7. Re-registration**

According to Article 14 of the Law on Political Parties “any amendments introduced into the charter of a political party shall be subject to State registration within the procedure and terms as determined for State registration of the political parties.”

After each party congress, which depending on a party’s regulations can take place every 2, 4, or 5 years, the party submits to the Ministry of Justice the minutes and decisions of the congress and renewed charter for re-registration. This gives the government another lever of control over the party. For instance, two amendments were made to the charter at the 2006 congress of Musavat: one on the creation of the parliamentary faction of the party, the other a provision on “supporters” (in addition to “members”) of the party. Re-registration of the party with the new amendments to the charter was refused on the grounds that the first amendment would mean interference in the responsibilities of the parliament, while the second violated the Law on Political Parties where the concept of “supporters” does not exist. In accordance with the charter of Musavat, since the amendments were not registered by the Ministry of Justice, they were not adopted by the party. Thus, the Ministry of Justice supervises not only the correspondence of the party’s activities to national laws but also correspondence with the actual charter of the party. However, in this case the Guidelines have a clear recommendation on procedure, stating, that “ where existing registration requirements are changed such changes should not result in revocation of the registration status of a political party”<sup>39</sup>, which should be given a reasonable opportunity to supplement their registration documents.

Re-registration is also required if there is a change in the name of the party.

There are no restrictions on the programmes of parties except for those indicated in Article 4 of the Law on Political Parties.

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<sup>39</sup> CDL-AD(2011)024 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission at its 84<sup>th</sup> Plenary Session ( Venice, 15-16 October 2010).para 68.

### 1.3. Protection against State Interference

Article 12 of the Law on Political Parties defines the rights of parties, including dissemination of information about their aims and activities, establishment of political blocks, unions, federations, and associations by uniting on a voluntary basis, participation in a democratic way (individually or in block with other parties or organizations) in the elections for president, parliament and local governance bodies of the Republic of Azerbaijan, in the formation of the bodies of executive power of the Republic of Azerbaijan, influencing in a democratic way the drafting of decisions of the state bodies, represent and protect the interests of their members the state bodies and non-governmental entities and other. They can also exercise other rights, including the popularization of their ideas, aims and programmes, establishment of mass media, holding meetings, demonstrations, and other mass meetings – within the procedure defined by law. At the same time, Article 12 states what the parties cannot do. For example, they may not interfere with the activities of State bodies and officials.

Article 13 of the Law on Political Parties stipulates the rights and obligations of the State vis-à-vis political parties. It asserts a number of obligations of the state to parties such as the guarantee of the respect for the rights and legitimate interests of political parties, the creation of equal legal conditions for the implementation of the tasks set forth in their charters in accordance with the Constitution and laws of the republic of Azerbaijan, the circulation of their documents through the agencies of the State-owned press, and the protection of the leading bodies of the parties and establishment of a State guard service to arrange for this provision.

In practice, the provision on State Guard Service has never been implemented, remained on paper and was withdrawn from the text of the Law in its most recent version of the draft ( see chapter 7).

According to Article XIX report, the state control over printing and distribution facilities caused a particularly difficult situation for printed media, as there is only one main distribution center and the newspapers are sold in few places ( 1 kiosk per 10,000 citizens)<sup>40</sup>. The access of the other than ruling party newspapers to the agencies of the state owned press remains limited mainly to Baku city.

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<sup>40</sup> Azerbaijan's Deteriorating Media Environment Report of the International Freedom of Expression Mission to Azerbaijan 7-9 September 2010. Article XIX, October 2010., p.16.

The second paragraph of Article 13 states that interference with the activities of political parties by the State and government agencies and officials shall not be allowed, except in cases provided by law. The case of Iskandar Hamidov<sup>41</sup> is an illustration of interference by government authorities with the freedom of association.

The amendment to Article 15, *Responsibility for violations of the legislation on political parties* of the Law on Political Parties, introduces a condition that a national emergency may be used as an additional channel for state intrusion into party activities. It states that “the activities of a political party, which create obstacles for the elimination of conditions causing the emergency situation, can be stopped in accordance with the procedure established by the law.”<sup>42</sup>

#### **1.4. The Role of Parliamentary Groups and Opposition**

To make democratic procedures work most effectively and to promote democratic institutions’ representative functions, there is a need to find the best balance between the voices of the parliamentary majority and minority. The widespread common European model suggests a substantial parliamentary representation of political opposition and wide opportunity for the opposition to oppose and offer alternatives to the politics of the majority and government.<sup>43</sup>

The appearance of parties is closely linked to the formation of parliamentary groups, which historically is tied to the change in the electoral system and first of all, the universal suffrage and the adoption in many countries of a proportional system<sup>44</sup>

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<sup>41</sup> See Annex 4. Communication to the ECHR on the case of *Iskandar Hamidov versus Azerbaijan*.

<sup>42</sup> The Law on Political Parties (as amended 4 May 2004, 11 June 2004, 4 March 2005, 15 April 2005, 3 March 2006, 1 October 2007, 9 October 2007). In Azerbaijani language.

<sup>43</sup> CDL-AD92010)025 Report on the Role of Opposition in a Democratic Parliament, adopted by the Venice Commission at its 84<sup>th</sup> Plenary Session (Venice 15-16 October 2010), Para 15p

<sup>44</sup> “Report on the Status of Parliamentary Groups,” produced for the Association of Secretaries General of Parliaments 1995, <http://www.asgp.info/Resources/Data/Documents/GAEXEJMSTYHOCVQYPTUKZDAMUTWXTE.pdf>

Because the primary role of the parliamentary groups is to translate the campaign promises into legislative realities, the party groups play a fundamental role in the legislature, which extends to “undertaking the legislative initiatives, appointing legislators to committees and laying out the timetable for the debate”<sup>45</sup>.

A number of documents of international and European organizations point to the necessity to provide all the conditions for the formation and activities of parliamentary groups, calling it “a global norm”<sup>46</sup> Because the opposition in and outside parliament is an essential component of a well functioning democracy, as stated in PACE resolution 1601 (2008), “the democratic quality of the parliament is measured by the means available to the opposition or the parliamentary minority to accomplish its tasks”<sup>47</sup>

The PACE resolution stresses that “the right to form a political opposition shall be considered as a key element of a genuine democracy ... Opposition members should be able to exercise their mandate in full and under at least the same conditions as those members of the parliament who support the government, they shall enjoy the same rights.”<sup>48</sup>

Based on this definition of role of opposition and parliamentary minority, the Assembly encourages the parliaments of member states to upgrade or reform their regulations, to reflect the status of opposition relevant to the requirements of the modern society.<sup>49</sup>

As the right of freedom of association is equally extended to the legislators and to the people, the regulation of Legislatures should clearly state criteria for creation of parliamentary groups, while the Legislature “should provide adequate resources and

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<sup>45</sup> Toward the development of the International minimum Standards for the Functioning of Democratic Legislatures. A Discussion Document for Review by Interested Legislatures, Donors and International Organizations, NDI, January 2007. Para.4.2.

<sup>46</sup> Ibid.para 4.2.1.

<sup>47</sup> Para 2 and 3,. Procedural Guidelines on the Rights and Responsibilities of the Opposition in a Democratic Parliament.” PACE Resolution 1601 (2008), Council of Europe, adopted by the Assembly on 23 January 2008.

<sup>48</sup> Ibid .Para 5.

<sup>49</sup> Ibid., Para 9 and 10.

facilities for party groups pursuant to the clear and transparent formula that does not unduly advantage the majority party.”<sup>50</sup>

In many countries the legislature provide logistical, technical or administrative support to the party groups. In some, such as Belgium Denmark, France, Germany, Ireland- the party groups are directly funded proportional to their representation in the parliament. In some, like in Izraeli Knesset – the groups receive a monthly sum for staff costs.<sup>51</sup>

In the Azerbaijan context, this means that the rules of Internal Regulations of Milli Mejlis should introduce the system which would encourage formation of parliamentary groups ( party groups or mixed groups) through provision of the public funds. This is relevant especially after the last elections, which made the parliament heavily dominated by the ruling party. These measures include: provision for direct funding of the parliamentary groups proportional to its size in the legislature and indirect public funding, such as offices, meeting rooms, and monthly cost of staff. ,

#### **1.4.1. The Right to form groups or factions in the parliament.**

The level of regulations related to the formation of parliamentary groups vary across the world – from constitutional (Portugal, Slovenia) to non-legal and only political, such as in Denmark.<sup>52</sup> The right to form groups in the parliament ranges from permissive to compulsory. As the requirement of conditions for the creation of groups is closely associated with the extent to which their formation is obligatory, in

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<sup>50</sup> Section 4, Recommended Benchmarks for Democratic Legislatures. A Study Group Report Published by the Commonwealth Parliamentary Association, December 2006. Available at: [http://www.europarl.europa.eu/pdf/oppd/Page\\_8/Recommended\\_Benchmarks\\_for\\_Democratic\\_Legislatures%5B1%5D.pdf](http://www.europarl.europa.eu/pdf/oppd/Page_8/Recommended_Benchmarks_for_Democratic_Legislatures%5B1%5D.pdf)

<sup>51</sup> Toward the development of the of International Minimum Standards for Functioning of Democratic Legislature.A Discussion Document for Review by Interested Legislatures , Donors and International Organizations, NDI, January 2007, para 4.2.3.

<sup>52</sup> “Report on the Status of Parliamentary Groups” produced for the Association of Secretaries General of Parliaments 1995, <http://www.asgp.info/Resources/Data/Documents/GAEXEJMSTYHOCVQYPTUKZDAMUTWXTE.pdf>

many parliaments participation of deputies in groups is mandatory.<sup>53</sup> In Germany, for instance this right is permissive, while in Italy, or Spain- mandatory.<sup>54</sup>

It is permitted to form groups in the Parliament of Azerbaijan– the right to form groups and factions is not mandatory. While the rights of individual deputies are defined both at the constitutional level (Articles 89, 90, 91, 96 of chapter 5 of the Constitution) and statutory – The Law on Status of the Deputy to Milli Mejlis of 17 May 1996, Internal Regulations of Azerbaijan Parliament of 17 May 1996), the right to form groups in the parliament is reflected only in the Internal Regulations of the Milli Mejlis. Of the 53 articles of the Internal Regulations of the Azerbaijan Parliament (Milli Mejlis)<sup>55</sup> only one – Article 43 – is devoted to the right of deputies to form groups and factions. Article 43 on *Factions (groups) in the Milli Mejlis* states that no less than 25 deputies can form factions (groups) united on a voluntary basis.

The decision to create such a faction (group) is announced by the party at a meeting of the Parliament and the faction is registered at the Secretariat of the Milli Mejlis. The law also determines the rights of factions, i.e. to submit proposals for discussion in parliament and express opinions on any issue discussed in the parliament. However, the rights of the individual deputies, including immunity and protection, as in addition to the Internal Regulation are reflected in the Law on Status of the Deputy of Milli Mejlis<sup>56</sup> in greater length and in more details - much wider than those of the factions and groups in Article 43. Although the Law ascribes certain rights to the factions, it does not state the supremacy of a faction vis-à-vis the rights of individual deputies. The law includes the condition that a faction ceases to exist when the number of deputies in the faction is less than 25. In this case, the decision on the faction's liquidation is announced during the meeting of the parliament. There is no indication in the law who takes the decision.

The faction is not given any public money in the parliament or preferences in the rules of the parliament.

In reality, the requirement of 25 members for the creation of a faction is too high for a parliament of 125 seats. In addition, the composition of the Azerbaijani parliament

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<sup>53</sup> Ibid. p. 183.

<sup>54</sup> Ibid. pp.198-200.

<sup>55</sup> Internal Regulations of the Parliament of Azerbaijan Republic adopted by the decree of the President Heydar Aliyev on 17 May 1996, N. 74-IQ, "On adoption of the Internal Regulations of the Milli Mejlis of the Republic of Azerbaijan." (in Azerbaijani language).

<sup>56</sup> Law on the Status of the Deputies of Milli Mejlis of 17 May 1996 N.73-IQ

since 1995 has been heavily dominated by the ruling party, (with mainly pro-government independents), leaving the opposition with a minority of only 5-7 deputies, representing 3 or 4 parties. This has precluded the creation of any group or faction by an opposition party, with only ruling party representatives qualifying.

After the 2005 elections, Musavat created an MP group of 5 people, but it was not recognized officially due to the insufficient number of members. The minimum number of deputies necessary to form a group or a faction varies across the world. There is no minimum, for instance, in the UK, Netherlands, Norway, New Zealand, Ireland, while Iceland and Japan require at least two members.<sup>57</sup> Germany and Senegal require a minimum percentage respectively 5% or 10% of the all members. Belgium, Luxembourg, Brazil, FYR of Macedonia, and Switzerland require 5 members to form a group. The Italian Senate requires ten members to create a group, except for the mixed groups (*Gruppo Misto*).

In conclusion, the 20% threshold for the formation of factions in Azerbaijan is too high to allow meaningful application in the current political context. especially combined with the majoritarian system, which makes it quite difficult for smaller parties to enter the parliament at all.

**Table 2. Minimum percentage of deputies required to form a faction in Azerbaijani Milli Mejlis and selected European parliaments**

Country		Total number of Members in Parliament/Chamber	Minimum number of Members for political group	% of total
Azerbaijan	Milli Mejlis	125	25	20

<sup>57</sup> I. “Report on the Status of Parliamentary Groups” produced for the Association of Secretaries General of Parliaments 1995, <http://www.asgp.info/Resources/Data/Documents/GAEXEJMSTYHOCVQYPTUKZDAMUTWXTE.pdf>, p.200

Spain	Congreso	350	15	4,3
	Senado	259	10	3,9
Luxembourg		60	5	8,3
Belgium	LaChambre	150	5	3,3
	Le Senate	71	2	2,8
France	Assemblee	577	20	3,5
	Senate	331	15	4,5
Italy	Camera Dei	630	20	3,2
	Deputati	315	10	3,2
	Senato			
Germany		598	30	5
Portugal		230	2	0,9
Sweden		349	14	4
Estonia		101	5	5

*Source: Parliamentary Rules of Procedure. An Overview. An OPDD publication on topical parliamentary affairs. European Parliament-Office for Promotion of Parliamentary Democracy-2010. PP.58-59.*

Usually the parliamentary groups are formed on the basis of political party or an election bloc, or coalition, but in some cases, such as in Italy, while in principle each group should be composed of the deputies of the same party, the group may be formed on the heterogeneous basis, or a mixed group, bringing together MPs from diverse smaller parties.

In practice, members of parliament in Azerbaijan are restricted by the presiding officers in their interventions at the podium, the latter being mainly at the disposal of the chairs of the Parliamentary committees and executive's representatives (ministers for example), thus left with the option to comment and express their positions through the microphone at the seats.

So far the opposition members did not have access to the positions of vice presidents of the committees, or vice-speaker of the parliament of Azerbaijan Republic. This is in contrast to the practice in many democratic states, where the distribution of positions for leadership of committees is designed to balance the majority-minority power in the parliament. According to an NDI Discussion Document, “to ensure the rights of minority legislators in committees, opposition legislators or minority party legislators should not be barred from chairing committees. Minority chairs already exist in legislatures of Germany, Portugal and Romania for instance, while the Public Accounts Committees in Canada, India and the United Kingdom goes as far as to reserve the chair for the opposition, because it reviews the financial performance of executive branch and has an audit function.”<sup>58</sup>

Since 1993, the parliament’s sessions are not broadcast live on TV. This lack of media coverage has affected transparency and the direct monitoring of parliamentary activities by their constituencies, and thus limits the population’s ability and capacity to influence the political process.. .

After the 2010 elections, when major opposition parties were left out of the parliament and the political plurality of the parliament further decreased, the reduction of the number of required deputies to form a group, the introduction of quotas for leading or second positions in the committees, and creation of legal provisions for the formation of groups under the model of the Italian Gruppo Misto can be considered as measures to promote Azerbaijan’s parliamentary effectiveness. The inclusion in the Internal Regulations of the special provisions on giving speaking privileges to parliamentary groups and factions would promote greater participation of the parliamentary opposition and minority.

## **2. Parties as Organizations**

A political party’s structure is regulated by the law only in general terms, requiring certain aspects to be reflected in the charter. Article 6 of the Law on Political Parties stipulates that a party’s charter should contain the name, aims, and functions of the political party, the structure of the party, conditions and procedure for joining and leaving the political party, the rights and duties of the members of the political party, disciplinary measures that might be imposed on members (not contradicting the laws of Azerbaijan), sanctions (not violating any laws), the powers and rules of organization for the governing bodies of the political party, the terms of their office,

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<sup>58</sup> Toward the Development of International Standards for Democratic Legislatures. A Discussion Document for Review by Interested Legislatures, Donors and International Organizations, NDI, January 2007.p.26.

the procedures for adopting decisions and forms of supervision, conditions, forms and terms of holding meetings of party members and their representatives, sources of funds and other property of the political party, procedures for amending the charter of a political party, and procedures for terminating the functions of a political party and its property.

There are no direct requirements on a party structure to be democratic or a special section on internal democracy of parties in the Law of Political Parties. The term “democratic” is used only in application to participation in elections and the ways the political party can influence a state’s decision-making. Article 12, *Rights and Duties of Political Parties*, of the Law on Political Parties states that political parties, among other duties, “shall take part in a democratic way (individually or in a bloc or union with other parties and organizations) in elections for the President, parliament, and other elected bodies of the Republic of Azerbaijan, in the formation of bodies of executive power of the republic of Azerbaijan or influence in democratic way the drafting decisions of the State bodies.”

## **2.1. Membership**

The rights and obligations of party members are regulated by the Law on Political Parties and the Charters of the political parties. According to the legislation, each party should have registered membership. In addition to what was mentioned in regards to membership in the previous chapter, the Law on Political Parties includes a separate provision on Rights of Members (Article 9). The rights, which should be defined in the party’s charter, should not contradict the Constitution and Laws of Azerbaijan, as well as international legal instruments on human rights and freedoms ratified by the Republic of Azerbaijan. Participation or non-participation of a citizen in the activity of a political party may not serve as a basis for the restriction of his/her rights and freedoms, or barring him/her from discharging of duties defined by law, except for the cases referred to in Article 8 of this law. Requiring indication of affiliation to any political party in official documents shall not be allowed, as according to Article 9. The last paragraph of the article contains an internal democracy requirement that “each member or group of members of a party shall have the right to freely express their will.” The procedure for the expression of said will should in turn be defined, as stipulated in Article 10, in the charter of the political party.

According to the charters of the parties, a member of a political party must be a citizen of Azerbaijan who is at least 18 years of age and accepts the charter and

programme of the party, excluding those in accordance with the respective provisions of the Law. The stress is on the non –discriminatory nature of membership –regardless of their religious beliefs, social status, gender, and ethnic identity. In Azerbaijan, party membership is individual.

### **2.1.1 Classifications of Membership in Political Parties**

The Law on Political Parties does not indicate different types of membership and this differentiation cannot be found in the charters of political parties with the exception of the Civil Solidarity Party that has a charter that allows “joining the party in a collective manner” for special groups of people like prominent intelligentsia (paragraph 5.3).<sup>59</sup> The unapproved version of the Musavat party charter suggests that, besides for membership, the party also has a “supporters” category.<sup>60</sup>

### **2.1.2. The Rights of members of political parties**

According to the parties’ Charters, members have the following rights:<sup>61</sup>

- To elect and be elected in the governing and other bodies of the Party;
- To actively participate in the activities of the Party;
- To freely discuss and criticize the political and other activities of the party, come up with proposals, and commentaries;
- To be present at the meetings of the party where one’s own activities are discussed;<sup>62</sup>
- To use the protection of the party;<sup>63</sup>

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<sup>59</sup> Para 5.3, Charter of the Civil Solidarity Party.

<sup>60</sup> Para 1.2, Charter of the Musavat party (unapproved version of the charter).

<sup>61</sup> Charters of New Azerbaijan Party ( YAP) , Musavat Party, Popular Front Party, Umid Party, Civil Solidarity Party, Adalat Party, Democratic Reforms Party, Liberal Party, People’s Party, Great Creation Party, and Ana Vatan Party.

<sup>62</sup> Para II.4, Charter of Umid Party

<sup>63</sup> Article 4, Charter of New Azerbaijan Party ( YAP) , Para 3.4, Charter of Liberal Party, Para 4.5.6, Charter of People’s Party; This right of membership in a political party likely refers to a party’s ability to present on behalf of a member in the possibility that there is a court case.

- To use the party press organ to express one's own opinion.<sup>64</sup>
- To terminate one's own membership in the elected body of the party;<sup>65</sup>
- To terminate one's own party membership; and
- To not implement decisions adopted by governing bodies of the party, to which a member has expressed a principled objection during its preparation.<sup>66</sup>

## 2.2. Organizational Structure of Political Parties

The Law on Political Parties does not specify the types of officials, elements, or bodies to be included in the party's structure, except for the "constituent congress, leading bodies, and the charter." In general, the organizational structure of parties is designed according to the structure accepted in Europe or the US and includes the representative body, the political council, executive organ, elected chairman,<sup>67</sup> and inspection commission.<sup>68</sup> Parties also have provisions for the calling of extraordinary Congresses.

The highest body of the party is the Congress, which is convened once every four years (New Azerbaijan Party ( YAP) , Musavat, Umid, Civil Solidarity Party, Adalat, and Liberal Party), two years (Popular Front, Democratic Reforms Party, and People's Party), two years and six months (Great Creation Party), or five years (Ana Vatan Party).

Article 4 of the Law on Political Parties states that a party's structure is based on the territorial principle, e.g. it has a geographically structured branch basis (besides for the central office, it has local and regional (town) branches). The basis of the party at the lowest level is the primary unit, which is created by at least three party members (the party member can be a member of only one primary unit). The governing body of the primary unit is the 'Conference.' The local units form the regional (city) branches. The conference elects the chairman and the deputies of

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<sup>64</sup> Para II.2, Charter of Ana Vatan

<sup>65</sup> Para II.4 Charter of Umid Party

<sup>66</sup> Para 16.2 Charter of Democratic Reforms Party

<sup>67</sup> In Musavat these organs (all elected) are called *Qurultay*, *Mejlis*, *Divan*, and the party chairman is the *Bashgan*.

<sup>68</sup> In addition to the Inspection Commission, the Democratic Reforms Party has a Commission of the Political Council on resolution of disputes within the Party. Article 21 of party's Charter.

the party, secretary (Civil Solidarity Party), and if it is more than 20 (Musavat) or 30 people New Azerbaijan Party (YAP) elects the Council of the primary unit, representatives to the regional conference, and gives the proposals to the election commission.

The regional units are established by the decision of the Political Council. All the units, including the primary and regional (city) participate in the work of higher bodies of the Party by sending their elected representatives to Congresses or Conferences.

Some parties' charters have a provision on the type of voting. In the Musavat party, voting is secret, except for the case of accepting a new member or expulsion of a member, when the voting can be open.<sup>69</sup> In the Adalat Party, voting in the Congress can be both open and secret.<sup>70</sup> In the Popular Front Party, secret voting is mentioned in the procedures for adding new members,<sup>71</sup> while in the Democratic Reforms Party, the election of the party Chairman is carried out through open voting.<sup>72</sup>

A Party Congress can have the following functions:

- Adopting the Charter (and amendments and addenda) and the Party Programme;
- Electing and recalling the chairman of the Party and Inspection Commission;
- Starting and terminating a party's activity;
- Hearings, discussions and assessments of activities reports of the party's Chairman, the Council, and the Inspection Commission
- Determining the strategic directions of the party's activities;<sup>73</sup>
- Adopting the anthem, emblem, and banner of the party;<sup>74</sup>
- Electing editors of the party media;<sup>75</sup>

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<sup>69</sup> Para 8, Charter of Musavat Party.

<sup>70</sup> Para 4.5, Charter of Adalat Party

<sup>71</sup> Para 111.3, Charter of Popular Front Party

<sup>72</sup> Para 18.1, Charter of Democratic Reforms Party

<sup>73</sup> Article 3, Charter of New Azerbaijan Party (YAP)

<sup>74</sup> Para 15.9, Charter of Civil Solidarity Party

- Nominating the party candidates for the presidential and/or other elections in accordance with the procedures in the legislation of the Republic of Azerbaijan.<sup>76</sup>

Changes and amendments to the charters are usually adopted by a 2/3 majority of votes at the Congress (Musavat, New Azerbaijan party ( YAP) , Democratic Reforms Party) or a 50% + 1 vote for the Popular Front Party.

### **2.3. Internal Democracy**

The Law on Political Parties does not use the term “internal democracy” to describe party structure or activities, but lays down in Article 3 the major principles for party functions, such as freedom of association, voluntariness, equality of rights among members, self-government, legality, and publicity. There is a provision on the rights of the party members in the Law on Political Parties, where the law obliges the charter of the party to define the rights of the members, which should not contradict the Constitution and Laws of the Republic of Azerbaijan, international legal instruments on human rights, and freedoms ratified by the Republic of Azerbaijan.<sup>77</sup>

The parties have an internal mechanism for enforcement of charters. For instance, the Charter of the Democratic Reforms Party states that in case there is any division of the party violating the party’s rules, the Political Council on the basis of an opinion of the Central Inspection Commission shall suspend the activity of the respective division, dissolve and reorganize it, examine compliance of their decisions with the charter and legislative acts, and/or repeal any decisions contravening the Charter and legislation (paragraph 6.7).

### **2.4. Restrictions on Party Activities**

In addition to the restrictions which were mentioned above in the report, the establishment and functioning of political parties by foreign States, as well as their branches and subsidiaries on the territory of the Republic of Azerbaijan is not allowed by the Law on Political Parties. Political parties may not interfere with the

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<sup>75</sup> Para VI.4.7, Charter of Popular Front Party

<sup>76</sup> Para IV.7.2, Charters of Umid Party, Para 17.5 Charter of Democratic Reforms Party, Para 4.3 Charter of Liberal Party

<sup>77</sup> The Law on Political Parties, Article 9.

activities of the State bodies and officials. The leading bodies of political parties shall be based only in the territory of the Republic of Azerbaijan.

Financing of the activities of political parties by Foreign States as well as by legal and natural persons of foreign States is prohibited according to the article 17 of the chapter 4 of the Law on Political Parties.

According to Article 20, political parties may not be engaged in business or commercial activities.

The possession by parties of armaments, explosive substances, and other materials causing threats to the life and health of citizens (including threat to environment), their stocking or preservation are also prohibited in Article 4. The Law on Political Parties says nothing about the prohibition of militia or private armed groups for political parties, but the Criminal Code prohibits in general the creation of militias or private armed groups.<sup>78</sup> Political parties also cannot own land, industrial enterprises, production unions, or cooperatives.

### **3. Parties in Elections**

Since the independence of Azerbaijan, four parliamentary elections were held in 1995, 2001, 2005 and 2010, while six presidential elections were held in 1991, 1992, 1993, 1998, 2003 and 2008, and three municipal elections in 1999, 2004, and 2009.

The legal framework was changed a few times during this period – the last time in June 2010, when a number of amendments were made to the Election Code. Among these amendments were the reduction of the election period for all elections from 70 to 60 days, and the campaign period from 28 to 23 days, along with the elimination of state funding for campaign expenses.

The features of an Azerbaijani system that analysts called “superpresidentialism” could already be found in the 1995 Constitution because it allowed for extensive control of the President over the judiciary,<sup>79</sup> along with the Parliament, which has

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<sup>78</sup> The Criminal Code of the Republic of Azerbaijan (Adopted 30 December 1999), Article 279.

<sup>79</sup> According to the article 109.9 of Constitution of the Republic of Azerbaijan of 1995 the President directly appoints the judges of the Courts of Law, presents a proposal to the Parliament on the appointment and removal from the position

been completely aligned to the President, following the disputed 1995 Parliamentary elections.<sup>80</sup> A further influencing factor on the status and development of political parties was the cancellation through the 2002 referendum of the mixed parliamentary election system in 1995 (12 November) when 100 seats were elected on a majority basis and 25 on a proportional basis (party lists). The change created a full majority system for the 2005 parliamentary elections onwards.<sup>81</sup> Before the change, on the proportional ballot only the parties and blocks that reached the 6% threshold were eligible to participate in distribution of the 25 seats.

The questionable transparency of the resulting parliamentary elections from 1995 through 2010 left society and the political parties without an objective indicator of the parties' relative influence and power as measured by the percentage of national votes obtained in the elections. The system change also made the process of unification and consolidation of blocs and alliances more complicated.

One of the key issues contested by the political parties and the government was the composition of the electoral commissions at all levels, including the Central Electoral Commission (CEC). According to the CEC law, the CEC should have one-third of its members from the majority party (ruling party), one-third from the opposition, and one-third independent. However, this provision has been criticized by the opposition parties, who have argued that the independents in fact have been pro-government.

In comparing the political environment during all four parliamentary elections, as reflected in the reports of the OSCE elections observation missions, there has been

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of Judges of the Constitutional Court, Supreme Court and the Courts of Appeal of the Azerbaijan Republic, in agreement with the parliament appoints and removes the General Procurator of the Azerbaijan Republic from his position.

<sup>80</sup> Presidential Elections in the Republic of Azerbaijan, 11 October 1998, OSCE/ODIHR Observation Mission Report, p.9.

<sup>81</sup> According to the literature in this field, particularly Stephen Fish, "The Executive Deception: Super Presidentialism and Degradation of Russian Politics," *Building the Russian State: Institutional Crisis and the Quest for Democratic Governance*, ed. Valerie Sperling, (Boulder, CO, Westview, 2001)177-192, and John Ishiyama "Political Party Development and Party 'Gravity,' Semi-Authoritarian States: The cases of Azerbaijan, Kyrgyzstan and Tadjikistan," *Taiwan Journal of Democracy*. Volume 4/ No.1:33-53), the type of election system has a direct influence on the development of political parties and democracy. They argue that in "superpresidentialism" there is less incentive for politicians to associate with political parties because they do not make it more likely that candidates will win election and gain access to power, instead politician have a strong incentive to pursue personal and informal relations in personal networks that circumvent political parties." (p.35)

a consistent trend of improving the technical aspects of elections but with decreasing competition during the whole electoral period. In the amended legislation that provides for the majority election system, there are no benefits or advantages to running as a party candidate. Moreover, the complexity of the registration procedure for a party- or bloc-nominated candidate has become a disincentive to become a party candidate. There are certain provisions that grant a party that has managed to register more than 60 candidates additional opportunities, such as free air time on the Public TV (articles 77.1, 80.1 of the Election Code) and for free space in State owned newspapers (article 83.1 of the Election Code, but in the last elections, due to the high number of invalidated signatures and rejections of candidate registrations, this rule appeared to be applicable only to the ruling party NAP, which refused to use this opportunity.

The 2010 elections, in comparison to the 2005 elections, were characterized by a drop in the number of candidate applications for registration by 35%. The number of applications denied registration increased from 4% in 2005 to 30% in 2010.<sup>82</sup>

The 2010 pre-election and, in particular, election campaign demonstrated that the majority system for parliamentary elections led to “competition” (judged by the content of their programmatic statements on TV) among the candidates over resolution of specific local social issues, which is more typical of municipal elections (such as building roads, schools, water supply), than of the level of parliamentary debates.

Table 3 on the Distribution of Seats in Parliaments elected in 1995, 2001, 2005, and 2010 demonstrate the trends in party development. For the first time, in 2010, not a single candidate from the major center-right parties – Musavat and the Popular Front – won a seat in the parliament, while the ruling party obtained the highest number of seats. This will have far reaching consequences for future party development in the country. Along with greater radicalization of political forces, this new trend may strengthen alternative frameworks for political and social activities, such as religious and social networks, as well as increasing informal networks based on regional and kinship ties. This trend of distribution of seats in the post-Soviet period is also in stark contrast with the historical parliament of the Azerbaijan People’s (Democratic) Republic (1918-1920), where there was more balanced representation of major political forces between the ruling party Musavat and the

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<sup>82</sup> Democracy Learning Report on Parliamentary Elections in the Republic Of Azerbaijan, Stage of Candidate Nomination and Registration, Friday, 22 October 2010

opposition party Ittihad. This early Parliament also included the Islamic Party (*Ittihad*) and parties of the communities, who lived in Azerbaijan, such as the Armenian Dashnaktsutsiun or the Russian-Slav society, as well as had representatives of each of the other ethnic groups, including Germans, Poles, Jews,

Number of seats
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and Georgians.

**Table 3**

**The Number of Seats of Political Parties in Azerbaijan's Parliament Elections**

Political Party	1995	2000	2005	2010
New Azerbaijan Party	53	79	61	72
Independents	55	25	46	42
Popular Front Party	4	7	1	
Musavat	1	2	5	
National Independence	4	2		
Azerbaijan Democratic Party	2			
Democratic Entrepreneurs	2			
Civil Solidarity	1	3	2	3
Azerbaijan Democratic Enlightenment Party	1			
Ana Vatan	1	2	2	2
Yurddash		1		
Social prosperity		1	1	1
Communist Party		2		
Alliance for the Sake of Azerbaijan		1		
Umid			1	1
United Azerbaijan Popular Front			1	1
Great Creation Party			1	1
Civic Unity			1	1
Adalat			1	1
Democratic Reforms Party			1	1
Compatriot Party		1		

*Compiled on the basis of election data from OSCE/ODIHR observation mission reports and Tahira Allahyarova, Farhad Mammadov, "Political Parties in Azerbaijan: from One Election to Another," Center for Strategic Studies under the President of the Republic of Azerbaijan, Baku, 2010*

#### **Table 4**

### **The Distribution of Seats of Political Parties in the Parliament of Azerbaijan People's (Democratic) Republic (1918-1920)**

<b>Parties and alliances</b>	<b>Number of Deputies</b>
Musavat	28
Independents	18
Ittihad	13
Socialist bloc	8
Dashnaktsutiun	6
Ehrrar	6
Hummet	5
Armenian Faction	5
Minorities (Georgians, Poles, Jews, Germans-1 each)	4
Slav-Russian society	3
<u>Total</u>	96

*The table is composed by the author on the basis of the data in Azerbaijan People's Republic (1918-1920), The Parliament, Proceedings, Baku, Azerbaijan, 1998.*

### **3.1. Legislative Framework of Parties' Participation in Elections**

The participation of the parties in elections is regulated by the Constitution, Election Code, and regulations of the Central Election Commission. The Constitution of the Azerbaijan Republic defines the requirements for candidates to the National Parliament as any citizen who is 25 years or older. The following category of people cannot run in the Parliamentary elections: People with double citizenship, obligations before foreign states, employees of the executive or legal branches of power, people involved in other paid jobs, excluding scientific, vocational or creative work, religiously affiliated people, incapacitated people, those condemned by courts

for grave crimes, and those who are sentenced by the court decision.<sup>83</sup> Prisoners can vote but cannot run as candidates.

The elections to the Milli Mejlis are conducted on the basis of single mandate constituencies. To secure a place on the ballot the candidates of political parties, blocs, along with independent candidates should collect at least 450 signatures from the constituency from which he or she would like to be nominated (para 147.1 of the Election Code).

A voter may sign in support of more than one candidate (para 147.2 of the Election Code), and a voter's signature should be collected through the procedures mentioned in Articles 56 and 57 of the Code. Article 56 stipulates conditions for collection of signatures:

- The collection of signatures starts from the day of decision by the Election Commission to certify the nomination from the relevant constituencies.
- The signatures should be collected within the territory of the election constituency the candidates were nominated for
- each signature sheet should have the detailed information about the candidate (name, last name, patronymic, date of birth, workplace, address of residence, name and number of constituency, and indication, if there is a pending sentence of the relevant article of the Criminal Code, or the name of the relevant Law of the foreign country, if the candidate committed an action abroad, which violated the law.) and may also contain the name of the political party of the candidate.

The article 57 of the Election Code prohibits the state bodies, municipalities, and legal entities, regardless of their type of property to collect signatures, prohibits making voters sign the signature sheets, to prevent them from signing, or paying any kind of reward during signature collection process. Non observance of this prohibition, if approved by the court, will lead to invalidation of the signatures and refusal to register and registered candidates. The person, who reached 18 years and possesses an active election right can collect signatures. If an agreement concluded between the candidate and the person collecting signatures, the payment should be made only from the election fund of the candidate. According to the same article (57) the signatures can be collected in educational institutions, residential

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<sup>83</sup> The Constitution of the Republic of Azerbaijan, (2009 edition), Article 85.

areas and other venues, where electoral campaigning is not prohibited by law. A voter shall record (or can be recorded by a person collecting signatures) when signing the signature list – a forename, surname, patronymic, date of birth, address of residence, ID or substitute document serial and batch number, date of issue, date of signature. This information shall be recorded by hand and its confidentiality ensured (para 57.4)

No candidate can be registered in more than one single-mandate constituency. A list of registered candidates in each constituency shall be published by the Central Election Commission at least 20 days prior to the election in periodicals (para 148.2 and 148.5 of the Election Code).

Electoral participation is restricted to registered parties; unregistered parties cannot participate in elections. The law includes the requirements for self-nominated candidates, for candidates nominated by initiative groups, by political parties, or by a block of political parties. The rules for nomination by an initiative group are regulated by the Instruction of the Central Elections Commission.<sup>84</sup> According to this Instruction, every citizen with voting rights can form a voters' initiative group to nominate candidates to the Milli Mejlis. The initiative groups are created on the basis of the territorial units of the relevant constituencies where they are settled. A meeting is held by voters with the intent to establish the initiative group in order to nominate a candidate. The meeting discusses the following issues: establishment of the voters' initiative group consisting at least of 50 people, nomination of the candidate, registration of the voters as an initiative group, and application to the ConEC for the decision on registration of the nominated candidate. Decisions are adopted and the protocols signed by the chair and secretary of the meeting.

The number of documents required to be registered as a candidate increases from the self-nominated candidates to the candidates nominated by party blocs. The result has been that more than one-half of registered candidates, 372 out of 704, in the 2010 parliamentary elections, were self-nominated.

To register nominated candidates, as stipulated in the Election Code in Article 58 that the authorized representatives of the candidates, political parties, or a bloc should submit at the most 50 days and at the least by 18.30 thirty days before the voting day, the following documents:

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<sup>84</sup> Instruction on the establishment of initiative groups and candidate nomination from citizens' initiative or voters' initiative during Elections to the Milli Mejlis, Central Election Commission (June 23, 2004), available at: <http://cec.gov.az/en/2milliMejlis2004/instruction/instruction06-44.htm>

- Signature sheets of voter (450) signatures supporting the candidates in their constituency;
- 2 copies of the protocols on the results of the signature collection prepared in the form set by the Central Election Commission;
- Notification of changes to the candidate's information;
- Information on the amount and sources of the candidate's income;
- Information on the property owned by the candidate;
- The candidates initial financial report (including information on funds spent in organizing the collection of signatures);
- Should a mistake be discovered in a document indicated in the above mentioned list, the relevant election commission should inform the candidate of the matter within 48 hours and propose the correction of mistake; and
- Upon receipt of election documents, the election commission should approve each folder containing signature sheets with their stamp, check that the number of submitted signature sheets matches the number recorded in the protocol on results of signature collection, and provide the candidate and the authorized representative of the party or the bloc of political parties with a written notice of receipt of election documents that indicates the date and time of the receipt, the number of signature sheets received, and the number of signatures therein. The receipt of documents may not be refused if the above mentioned persons submit the relevant documents to the relevant commission before the time, mentioned in Articles 58.1 and 58.2. The authorized representative of the candidates, political parties and the bloc of political parties may not be restricted from entering a relevant building.

Chapter 9, the *Basis for participation of the political parties and blocs of political parties in elections (referendum)* of the "Election Code," in addition to the general principles of participation in elections (Article 2), lists the requirements for the party or bloc to participate in elections. The Article of Chapter 10, *Nominations and Registration of Candidates during the Elections*, define the general rules of nominations and registration of candidates either on their own initiatives or directly by voters, parties, or blocs.

### **3.2. Registration requirements for self-nominated candidates**

The list of documents that the self-nominated candidate should submit to the respective District Electoral Commission, as defined by the Election Code and regulations of the CEC, include the following:

- Notification about the candidate nomination in writing (with the name, surname, patronymic, birth date, address of residence, serial and batch number of identification or a substitute document and main workplace or type of activities if not working);
- An application containing the written statement of the candidate to terminate activities incompatible with the post in elected government or with municipal bodies should be submitted with the notification. This application shall contain the information on the candidate (surname, forename, patronymic, birth date, address of residence, education, main workplace, and official position or type of activity, if not working). If the candidate has a pending sentence that has not been served or cancelled, the name and number of the relevant Article of the criminal code of the Republic of Azerbaijan under which they were sentenced should be recorded in their application. If a candidate has committed a criminal offense abroad that imposes criminal liability and has been sentenced by a court decision that has entered into force, and if the same action imposes liability under the Criminal Code of the Republic of Azerbaijan, the application should contain the title of the relevant law of the foreign country. Information on whether the candidate has foreign citizenship or obligations in foreign countries should be included alongside information on the candidate's citizenship of the Republic of Azerbaijan.

The relevant election commission shall examine the submitted documents within a 5-day period and submit the decision to the candidate or his/her authorized representative. The relevant election commission may not refuse to review the submitted documents.

### **3.3. Registration requirements for candidates nominated by an initiative group**

An initiative group can be created by no less than 50 people with voting rights and who live in the respective electoral district. They should appeal in writing to the local executive body or local self-governance bodies to get the venue (which could be either state or private premises) for the meeting. After allocation by the respective governing body of the venue, the initiator informs the constituency about the date and time of the meeting where they will discuss a number of issues related to the

nomination of the candidate. The candidate nominated by the initiative group should submit the following documents:

- The minutes of the electors' meeting on creation of the initiative group and nomination of the candidate, and
- The candidate of the voter's initiative group shall notify the relevant commission on their initiative in writing. The notification should contain the following information about each initiator and the candidate:
  - Forename, surname, patronymic, birth date,
  - Address of residence,
  - Serial and batch number of identification or substitute document,
  - Main workplace or official position (and activity if not working), and
  - The candidate or his/her authorized representative is given a confirmation in writing of submission of the documents by the Election Commission.

A candidate may include information on his/her party affiliation in the application using a certified document that proves this affiliation (Article 53.4 of the Election Code). In such circumstances, a candidate should come to an agreement with the relevant election commission on naming his/her political party with the name of the party containing no more than 5 words. The relevant election commission shall examine the documents within a 5-day period and submit a decision to the candidate or his/her authorized representative, certifying the nomination from the relevant constituencies. The relevant election commission may not refuse to review the submitted documents.

### **3.4. Registration requirements for candidates nominated by a political party**

According to Article 54.1 of the Electoral Code, a political party shall make a decision about nominating a candidate in conformity with the charter of the political party. Such a decision should be made by voting collectively. Thus, the central party should ratify the local choice of candidates.<sup>85</sup> This means, that as a rule, the candidates for elections suggested at the lower level of the party structure (primary

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<sup>85</sup> In some parties, such as the Liberal Party and Democratic Reforms Party, the nomination of a candidate for the Presidential Elections is made by the Congress.

or regional organizations) should be approved by the representative body of the party, with some exceptions mentioned in the section of party's structure, when the candidates for elections are nominated by the congress. The decision of a political party or a bloc to nominate a candidate shall be formalized by written minutes, which shall contain the following:

- The number of registered participants taking part in the meeting (congress, conference, meeting of the board);
- The number of participants required for adoption of a decision mentioned in agreement on the creation of a bloc of political parties;
- The decision on nomination of candidates and results of voting on this decision;
- The date of adoption of the decision; and
- A political party or bloc of political parties may nominate people, who are not members of the parties included in the bloc.

Article 54.4 defines the set of documents that the authorized representative should submit to the relevant election commission along with the names of candidates:

- A copy of the certificate of registration of the political party, certified by a notary;
- A copy of the charter of the political party that is in effect and certified by a notary;
- The decision of the congress, conference, or meeting of the board to nominate candidates and the minutes of the relevant meeting; and
- The powers of attorney of the authorized representatives of the political parties, certified in an order established by the Civil Code of the Republic of Azerbaijan.

Provision 54.6 specifies the documents to be submitted by the authorized representative along with the names of candidates in case of nomination of a candidate by a bloc of political parties, which includes:

- The decisions to nominate candidates of the congresses, conferences or meetings of board of the political parties included in the bloc and the minutes of the relevant meeting;

- The decision to nominate a candidate on behalf of the bloc of political parties, made at the meeting of the representatives of the political parties included in the bloc of political parties, and the minutes of the relevant meeting; and
- The powers of the attorney of the authorized representatives of the bloc of political parties, certified by a notary.

The authorized representatives of a political party or bloc of political parties shall submit the documents mentioned in Articles 54.1-54.7 of the Code together with the candidate's application, which shall contain:

- A commitment to terminate activities incompatible with his/her activities if he/she is elected;
- Consent to be nominated as a candidate;
- Surname, forename, patronymic, date of birth;
- Address of residence;
- Educational background;
- Main workplace or official position; and
- Party affiliation (with the candidate's consent)

The Election commission shall examine the submitted documents within a 5-day period. The only bases for refusal to register a candidate's nomination may be in two cases:

- If the documents mentioned in articles 54.1-54.7 are not certified as required, or
- If the rules set forth in the Code for the nomination of candidates are violated.

The Election Code allows political parties or blocs of political parties that have nominated or registered candidates in more than 60 single mandate constituencies to appoint a member with the consultative voting rights to each election commission. A candidate registered in a single mandate election constituency may appoint a member with consultative voting rights to the relevant election constituency of each of the Precinct Election Commission within the territory of the election constituency. In practice, although the members with consultative voting rights are appointed,

their responsibilities and rights are restricted and often reduced to those of observers.<sup>86</sup>

### **3.5. Registration requirements for candidates nominated by a bloc of political parties**

A candidate, who is nominated by a bloc of political parties, shall be approved by each political party included in the bloc. The decision of the bloc of political parties should be made at a meeting (congress, conference, or meeting of the board) of the representatives of the political parties. Such authorized representatives of political parties should be determined during the congress (conference, meeting of the board) of political parties. The Instructions, Rules, and Commentaries of the CEC describe the following list of documents to be submitted to the election commission to register the candidate:

- The decision on the candidate nomination and minutes of the meetings of the political parties- members of the bloc;
- The minutes of the meeting of the authorized representatives of the political parties or members of the bloc on the nomination of the candidate;
- Separate notifications on the nomination of each candidate;
- The powers of attorney of the authorized representatives of the political parties, certified in an order established by the civil code of the Republic of Azerbaijan;
- The list of the authorized representatives of the political parties; and
- The information about the candidate (name, surname, patronymic, birth date, work place, address, etc., see the above-mentioned lists).

The above-mentioned procedures in four different cases demonstrate that the system of registration is easiest for the self-nominated candidate, while the most complicated procedure is for nominations from a block of parties. This means that in addition to the absence of incentives typical of the proportional system for the parties to participate in elections, the amount of documents for registration may also serve as a disincentive to run as a party or bloc candidate.

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<sup>86</sup> This was the case, for instance, in the 2010 parliamentary elections, as confirmed by the member of the Central Election Commission Gulaga Aslanli (personally interviewed on November 15, 2010, Baku).

**Table 5**

Number of Nominated and Registered Candidates by Parties and Blocs in the 2010 parliamentary elections

<u>Party</u>	<u>Nominated</u>	<u>Registered</u>
New Azerbaijan Party(YAP) ruling party	115	113
AXCP-Musavat bloc	92	33
Karabagh bloc	99	32
Reform bloc	106	31
For the Sake of Humanity bloc	83	19
Democracy bloc	101	17

The numbers above demonstrate a significant difference between the nominated and registered candidates of the YAP party on the one hand and the main opposition bloc AXCP Musavat on the other. The 2010 pre-election and election campaign disclosed certain gaps in the legislation that have had an impact on the number of registered candidates. For instance, most of the signatures were invalidated by the CEC because of questionable authenticity<sup>87</sup> or the signatories' identification cards were invalid.<sup>88</sup> The Election Code does not have a provision on exercising the voting rights in latter case, which as a result allows manipulation by law.

Complaints with claims of cancellation of results in 57 district constituencies<sup>89</sup> were filed with the CEC in the aftermath of the parliamentary elections 2010. The CEC did not, however, cancel the results in any of the named constituencies.

<sup>87</sup> The OSCE /ODIHR Election Observation Mission's second interim report considered it "of great concern, as ConEcs as a rule reached their conclusions without having expert opinion of graphologist" (p.3).

<sup>88</sup> According to Azerbaijan's legislation, each citizen should renew his/her ID upon reaching 25, 35, and 50 years. In practice, however, many people continue to use old IDs because there is no date of expiration on the IDs.

<sup>89</sup> The number obtained in the Central Election Commission, (Baku 2010).

### 3.6. Parties in Presidential Elections

According to the Election Code,<sup>90</sup> political parties, blocs of political parties, along with citizens able to vote may nominate presidential candidates in accordance with Articles 53 and 54 of the Code. Article 180.2 states that each citizen possessing the right to vote can create an initiative group of at least 100 people to nominate a presidential candidate. Paragraph 1 of Article 181 also stipulates that a “political party, bloc of political parties should collect not less than 40,000 signatures in support of their candidate; at least 50 signatures should be collected from the territory of each constituency, and the total number of constituencies from which the signatures were collected should be no less than 60.”

The next paragraph of the same article states that each voter may sign in support of only one candidate. Before the Presidential elections of 2008 the number of required signatures was reduced in the Election Code. The OSCE final report on presidential elections in Azerbaijan in its assessment of these amendments stated that “the number of signatures was reduced from 45,000 to 40,000, however, a voter still may not sign in support of more than one candidate and the amendments eliminated the possibility for a candidate to pay a financial deposit in lieu of collecting signatures. In the 2008 presidential election, two prospective candidates were not registered because of an insufficient number of valid signatures.”<sup>91</sup> The cancellation of the deposit (2,000 manats, or around EUR 1,853, was required for a candidate in parliamentary elections) has evidently contributed to a dramatic decrease in the number of registered candidates, in particular during the 2010 parliamentary elections, as compared to parliamentary elections in 2005.

The Election Code includes Article 183 which provides the condition that more than one candidate is on the ballot. The election may be postponed for two months if there are no candidates for the Presidency or only one candidate was registered during the period indicated in the Election Code. If this occurs, the President in office shall continue to exercise his/her powers.<sup>92</sup> According to Paragraph 2 of the same article, if the conditions still remain on Election Day, the term may be

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<sup>90</sup> Chapter 30, article 180, para.1 of the Election Code of the Republic of Azerbaijan.

<sup>91</sup> Republic of Azerbaijan, Presidential Elections 15 October 2008, OSCE/ODIHR Observation Mission Final Report, Warsaw, 15 December 2008, p.8.

<sup>92</sup> Article 183, para 1, Election Code of the Republic of Azerbaijan.

extended further by three months. The Election Code, however, does not specify what follows next.

Upon registration, Article 184 of the Election Code states that presidential candidates are eligible for state funding of transportation, which is reimbursed from the funds allocated by the Central Election Commission for the preparation and conduct of elections. The Election Code also includes provisions related to the refusal of a political party or bloc of political parties to participate in elections, and Article 188 further stipulates the consequences of parties or a bloc of parties refusing to participate in elections. According to this provision, the refusal of a party or a bloc of parties to participate may not be a basis for refusing candidacy or cancelling the registration. At the same time, the party, which refuses to participate as a member of a bloc of political parties, may act as an independent political party or join another bloc of political parties.

According to Article 190.1 of the Election Code, a presidential candidate or his/her authorized representative should open a special election bank account after he/she submits a notification of the relevant decision of his/her nomination as a candidate of a political party or a bloc of political parties to the Central Election Commission, but at least 5 days prior to the submission of notification for registration of candidates to the Central Election Commission. According to Article 190.2, a registered presidential candidate shall open a special account on the basis of a document on his/her nomination received from the Central Election and documents mentioned in Articles 53 and 54 of the Code. The Code also establishes in 191.1 the upper limits of the fund, i.e. it cannot exceed 10 million manats (9.54 million EUR).

The election fund of a presidential candidate may be formed only from the following sources:

- Special funds for the presidential candidates nominated by political parties or blocs of political parties shall be formed from the funds contributed by the political parties or blocs of political parties for the presidential candidates under condition they are no more than 250 thousand manats (EUR 238,570); and
- Voluntary donations of citizens and legal entities may not exceed 3,000 (EUR 2,862) and 50,000 (EUR 47,713) manats respectively (191.2 of the Election Code);

Article 192 requires transparency for the use of election funds during the presidential elections and the publication of the following information in mass media:

- The financial report on expenditure of funds if the funds of the registered presidential candidate or of the presidential candidate exceeds respectively 10,000 (EUR 9,542) and 2,500 (EUR 2,385) manats;
- The legal entities who made donations to the registered presidential candidate or a presidential candidate in respective amounts exceeding 5,000 (EUR 4,771) and 1,250 manats (EUR 1,192) in this case the possibility of transfer of funds by the same legal entity through several installments of donations should be taken into account);
- The number of citizens, who made donations in the election fund in amounts exceeding 250 manats (EUR 238)
- The funds returned to donors and the grounds for their return; and
- The total amount of money received in and spent from the election fund (191.1-191.4 of the Election Code).

The ballot paper for Presidential Elections should contain the following information on presidential candidates in alphabetical order: surname, forename, patronymic, date of birth, residential address, main workplace (type of activity if not working) and nominators; the short name of the political party that a registered candidate is a member of in conformity with Article 54 of the Code.<sup>93</sup>

The Election Code (203.3) further obliges the Central Election Commission, based on the protocols of voting results received from Constituency Election Commission in addition to the provision of article 108 of the Code, to determine the number of election constituencies where legal violations have taken place during the conduct of elections, or determination of voting results which do not allow for the identification of the voters' will, the number of election precincts where voting results were invalidated, and the number of votes cast for each presidential candidate.

The Central Election Commission shall consider invalid the total results of a presidential election in the following cases:

- If the voting results are considered invalid or when they are cancelled in more than two-fifths of election precincts under the condition that the number of registered voters in the election precinct exceeds 25% of all voters registered in the constituency, or

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<sup>93</sup> Election Code of the Republic of Azerbaijan, paras. 199-2,199-3.

- on the basis of a court decision.<sup>94</sup>

Political parties in Azerbaijan have been generally active during presidential elections. However, in 1998, a few influential opposition parties boycotted the elections, claiming the basic conditions for the conduct of free and fair elections were not met. The pattern of the vote distribution, provided in the chart below, even under the conditions of elections, the transparency and fairness of which were questioned by the international observation missions, showed that running on behalf of a stronger political organization usually helped the candidate to mobilize votes. For instance, the second highest percentage of votes after Ilham Aliyev in the 2003 elections belonged to Isa Gambar, the leader of the Musavat Party. The data from the presidential elections indirectly support the argument of relatively high “party gravity” even for the opposition in Azerbaijan,<sup>95</sup> despite the absence of a proportional system or conditions for a competitive environment. The distribution of votes has also demonstrated how participation of the major opposition candidates (leaders of the political parties) affected the degree of competitiveness during elections in different years, showing that competition was highest when one of the major opposition parties participated.

## Chart 1

### The distribution of votes in Presidential Elections in 1998, 2003, and 2008 by percent

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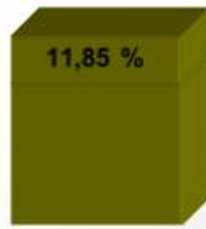
<sup>94</sup> Election Code of the Republic of Azerbaijan, para 204.1

<sup>95</sup> John Ishiyama, “Political Party Development and Party ‘Gravity’ in Semi-Authoritarian States: The Cases of Azerbaijan, Kyrgyzstan, and Tadjikistan,” *Taiwan Journal of Democracy*, Volume 4/ No.1:33-53. Comparing three states, the author’s study reveals that party gravity in Azerbaijan is higher than in Kyrgyzstan, although lower than in Tadjikistan. The indicator of “party gravity” is calculated on the basis of proportion of “continuous parties,” proportion of candidates running as independents, and the proportion of those running with party affiliation in the elections of single-mandate districts.

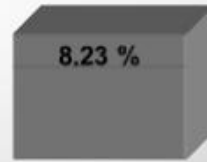
1998



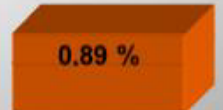
Heydar Aliyev (YAP)



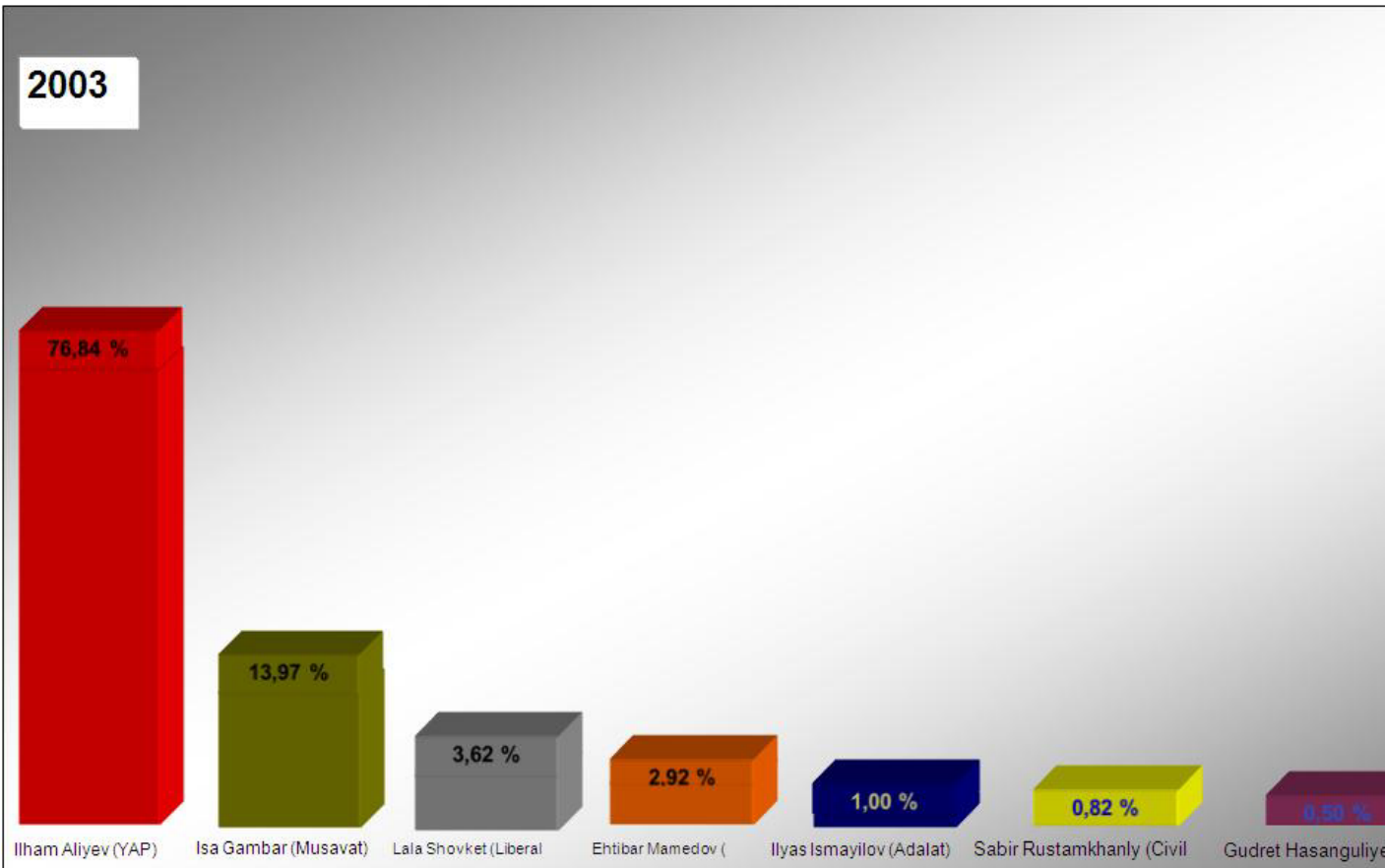
Etibar Mamedov (ANIP)

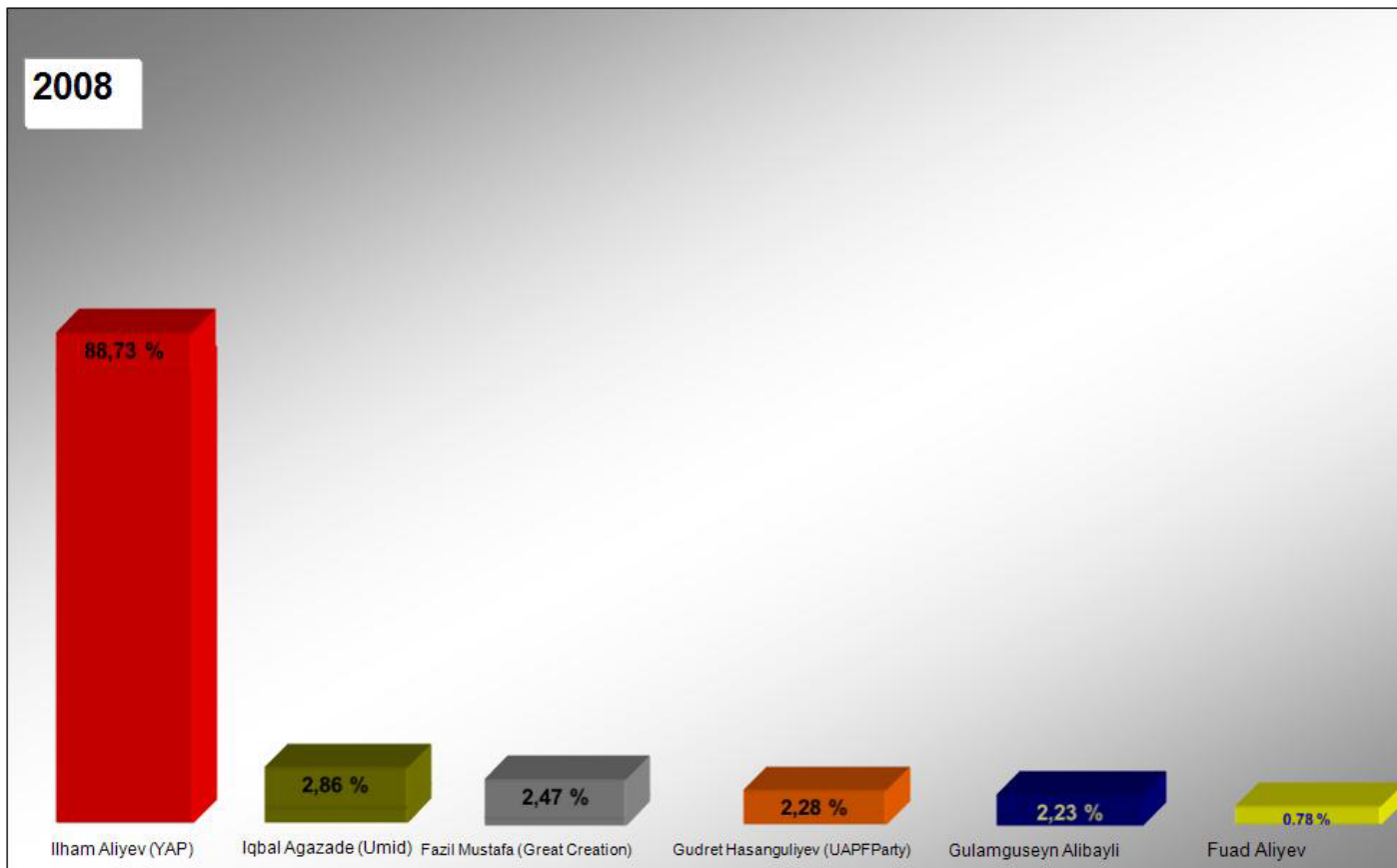


Nizami Suleymanov (IAP)



Firudin Hasanov (Communist Party) Ahsr





Not unlike in the parliamentary elections, the implementation of Election Code and other laws during presidential elections was problematic. According to the OSCE/ODIHR, in the 2003 presidential elections, “the authorities did not implement many aspects of the law in a fair, impartial and adequate manner.”<sup>96</sup> The report stressed the negative effect of other aspects of the legislative framework on the process, such as “severe restrictions on the public rallies, limitations placed on observation by domestic civic organizations, and the establishment of the Central Election Commission that did not enjoy the confidence of most candidates.”<sup>97</sup>

The OSCE/ODIHR observation mission in 2003 found the system of applying the right of freedom of assembly exceedingly problematic. NORDEM reported that, in spite of the broad guarantee of freedom of assembly with rather formal notification procedures granted by Constitution, “the Law on Freedom of Assembly allocates to the ExComs<sup>98</sup> to decide the conditions for holding rallies. Regrettably, these

<sup>96</sup> Republic of Azerbaijan Presidential Elections, 15 October 2003, OSCE/ODIHR observation Mission, p.1

<sup>97</sup> Ibid.

<sup>98</sup> ExComs refer to the heads of the local executive committees.

conditions were not applied equally for all candidates, another example that shows that the implementation undermined the intentions of the legislation.”<sup>99</sup> The scale of repressions of protests which followed the elections of 2003<sup>100</sup> and which the representative of Human Rights Watch called the biggest human rights crisis in years<sup>101</sup> had a significant impact on development of opposition and party system in the country.

### 3.7 Presentation on the ballot

Articles 165 and 166 describe the way that information on the parties and blocs should be presented on voting day. The Precinct Election Commission shall place a notice board in the voting room or right in front of it that contains the following:

- Samples of ballot paper;
- Information on political parties, blocs of political parties, and candidates who have been registered; and
- Information on the candidate (name, surname, patronymic, date of birth, education, main workplace and position, residential address and names of their nominators)

According to Article 166, the ballot paper should contain along with the information about the candidate, such as name, surname, date of birth, work place, and name

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<sup>99</sup> Azerbaijan: Presidential Elections, October 2003. Report by Heidi Sodergren, NORDEM report 06/2004, available at: <http://www.jus.uio.no/smr/english/about/programmes/nordem/publications/nordem-report/2004/06.pdf>

<sup>100</sup> The controversial character of the 2003 elections was reflected in separate opinion issued by the group of international observers. The Institute for Democracy in Eastern Europe (IDEE) organized 188 election observers for the October 15, 2003 presidential elections in Azerbaijan. This monitoring mission, requested by the U.S. government, was part of a larger group of observers monitoring under the auspices of the Organization for Security and Cooperation in Europe (OSCE). The IDEE observers, who observed more than 1,000 voting precincts and Constituency Election Centers where votes were tabulated, disagreeing “with mild preliminary report by the OSCE” collectively issued a "Votum Separatum," which stated, that 2003 presidential elections in Azerbaijan were not free, equal, just or transparent and concluded that “the elections were conducted with major violations of the laws of the Republic of Azerbaijan, not to mention gross violations of international standards” (Votum Separatum – Dissenting Opinion of the IDEE observer Mission from the OSCE/ODIHR preliminary Report about the presidential elections of October 15, 2003 in the Republic of Azerbaijan, signed on 18 October 2003 by 188 members of the IDEE Observer Mission to the Presidential Elections of the Republic of Azerbaijan.): <http://www.idee.org/azerbaijanelections.html>

<sup>101</sup> Briefing Report on Azerbaijan. Parliamentary Elections-7 November 2010, prepared for OSCE Parliamentary Observers by Tina Schon and Lucas Bauernfeind, International Secretariat of the OSCE Parliamentary Assembly Copenhagen.

of nominators, the short name and the emblem of the party if the candidate was nominated by the party or bloc of parties, and may contain (with the consent of the candidate) party affiliation in conformity with Article 53 of the Code. The candidates are listed on the ballot in alphabetical order by their surnames. Thus far, problems have not been reported with respect to presentation on the ballot.

### **3.8. The election campaign: Freedom of assembly and access to media**

The violations of freedom of assembly and equal access to media have consistently affected Azerbaijan's elections since 1993. Despite the adoption of the new Law on Peaceful Assembly in 2008, in the 2010 Parliamentary Elections, the freedom of assembly was a matter of special concern for the international observation missions. The OSCE/ODIHR<sup>102</sup> lists these deficiencies as:

- Lack of balanced and absence of unbiased reporting in the electronic media, resulting in an absence of alternative views;
- Scarcity of critical print media, unequal access of political parties to resources necessary for effective campaigning;
- Allocation of unsuitable campaign venues and prevention of political gatherings by opposition candidates outside of these areas;
- Credible allegations of intimidation of voters and candidates, and
- Misuse of administrative resources.

The Observation Missions have reported facts that testify the restrictive interpretation of the Election Code by the executive and electoral authorities with regard to possible meetings by political parties and candidates before the official start of the campaign period. The OSCE/ODIHR EOM observers "received reports of some instances of obstruction of candidates' campaign activities by the police and local authorities, including at officially allocated venues."<sup>103</sup>

Although the legislation provides for equal access to the media for all candidates and parties (with exception of those parties that registered candidates in more than

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<sup>102</sup> OSCE/ODIHR Statement of Preliminary Findings and Conclusions, International Election Observation Republic of Azerbaijan, Parliamentary Elections, 7 November 2010.

<sup>103</sup> Ibid.p.7.

60 constituencies that are eligible for free access to media), the access to media in practice remains one of the primary problems of the electoral environment.

As electronic media is under the control of the authorities, the coverage of the pre-election and election campaign was heavily dominated by the representatives of the ruling elite.

During 2010 parliamentary election campaign, two bloggers, Emin Milli and Adnan Hajizade, who were sentenced in August 2009 to 2.5 and 2 years respectively in prison on charges of “hooliganism and indicting minor bodily harm”, and the editor of two popular newspapers Eynulla Fatullayev (sentenced in October 2007 on charges of “terrorism, incitement to ethnic hatred and tax evasion” for 8 and a half years) were still in prison<sup>104</sup>. These criminal cases did not create a favorable political environment for the elections. Many opposition deputies complained about the obstruction of meetings with their constituencies by the local executives or police.

In regards to the media, there was a “deterioration of the freedom of expression in particular due to violence, detention, defamation lawsuits and other form of pressure on journalists, who express critical opinion and impunity of those who commits such acts.”<sup>105</sup>

According to the OSCE/ODIHR 2010 needs assessment mission report,<sup>106</sup> in the pre-election period, the opposition leaders and their views were rarely shown on television. While public TV makes an effort to provide balanced news coverage, the director of the Public TV was quoted in the ODIHR report that in reality, the direct airtime was not provided to the opposition leaders.<sup>107</sup>

The Election Code states that parties and blocs that have registered candidates in more than 60 constituencies are eligible for free airtime on TV and free space in state owned newspapers. Due to the high number of invalidated signatures of the opposition parties and blocs, only the ruling party YAP appeared to qualify. Thus,

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<sup>104</sup> All three are currently released.

<sup>105</sup> Republic of Azerbaijan, Parliamentary Elections, 7 November 2010, OSCE/ODIHR Statement of Preliminary Findings and Conclusions, International Election Observation, p.7.

<sup>106</sup> Republic of Azerbaijan, Parliamentary Elections, 7 November 2010, OSCE/ODIHR Needs Assessment Mission Report.

<sup>107</sup> Ibid.p.7

the CEC adopted a decision to grant 4 minutes of free airtime in the round table discussions on the Public TV to all parties and candidates, along with free space in the state owned newspapers.<sup>108</sup> This decision, however, was met with criticism from many party leaders. Arif Hajily, head of the opposition Musavat Party Central Administration commented that “the allocated airtime does not allow for the normal spread of political messages.”<sup>109</sup> In this case, an additional free time could have been provided for the candidates on the other state owned TV channels, or the representatives of the parties, who overcome certain threshold in the last elections should be granted greater free time as compared to the other candidates.

The arrest of the candidate to the parliamentary elections, Bakhtiyar Hadjiyev, in the post-2010 election period was recognized by international and local organizations as politically motivated<sup>110</sup> and connected to the fact that the candidate posted messages on social networks revealing election falsifications. Bakhtiyar Hadjiyev was detained on 4 March 2011 in the city of Ganja for allegedly breaching the court order not to leave his native town and later on the 29<sup>th</sup> of April, he was found guilty of evading military service (Article 321.1 of the penal code) and sentenced to two years in prison by the district court of Ganja. A member of the opposition party Popular Front, 20 year old student Jabbar Savalan was sentenced to two and a half years in prison allegedly for illegal possession of drugs on 4 of May 2011.<sup>111</sup> Despite the fact that blood tests did not show signs of narcotic use, he was sent to prison.<sup>112</sup>

Freedom of assembly, as a basic human right and a key condition for the functioning of political parties, has been violated both during and in between election campaigns. On 2 April 2011, leading activists of the major opposition parties Musavat and the Popular Front, together with human rights lawyer and

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<sup>108</sup> “Decision of the Central Election Commission of the Republic of Azerbaijan on the allocation of free airtime and space for publications and periodicals apart from the facilities considered by legislation in the Elections to the Milli Mejlis of the Republic of Azerbaijan appointed 7 November 2010.” Decision of CEC #.37/238, 15 October 2010. <http://www.cec.gov.az/en/parliamentary2010/documents/decision37-238.pdf>

<sup>109</sup> Milli Mejlis -2010 Online voting. Quote from Arif Hajili 23.10.2010 <http://www.namized.com/en/index.php?menu=sitatlar>

<sup>110</sup> Amnesty International called for Urgent Action related to the arrest of the Bakhtiyar Hadjiyev, 9 of March 2011, <http://www.amnesty.org/en/library/asset/EUR55/002/2011/en>

<sup>111</sup> “Jailed for Organizing a Protest on Facebook” Amnesty International, <http://www.amnestyusa.org/our-work/cases/azerbaijan-jabbar-savalan>

<sup>112</sup> Ibid.

parliamentary candidate, Vidadi Iskanderov, were detained at a public protest rally, and after a series of court hearings from August to October 2011 were sentenced from 1.5 to 3 years in prison on criminal charges.<sup>113</sup> The convicted include Arif Hajili (deputy head of Musavat), Tural Abbasly (Chairman of the Youth Organization of Musavat), Ahad Mammedli (Deputy Chairman of the Youth Organization of Musavat), Fuad Gahramanly (Deputy Head of the Popular Front Party -suspended term), Mahammad Medjidli (head of the department of the Popular Front Party), as well as Elnur Medjidli, Rufat Hajibeyli, Arif Alisli, Elnur Israfilov, Elsan Hasanov, Sahib Karimov, Zulfugar Eyvazli, Babek Hasanov, Ulvi Guliyev.

### 3.9. Funding of Elections

The Election Code has provisions on both the direct and indirect<sup>114</sup> public funding of elections. After abolition of direct state funding, the following provisions remain:

- Transport expenses are paid to registered candidates from the day of registration until official announcement of the election results (70.2 of the Election Code);
- During the election campaign period, administrations of State or municipal bodies, institutions or organizations are to release registered candidates from employment, study, or other service. During the campaign period, the relevant election commissions pay them the amount of their average wage but no more than 20 times the minimum wage as determined by law. The funding for this comes from the budget allocated for the preparation and conduct of elections. During the election campaign, registered candidates may neither be dismissed from their job, service or educational institution by State or municipal bodies, institutions or organizations nor be transferred to another position without their agreement (Section 70 of the Election Code).

The financing of elections is regulated by the provisions of Article 90 of the Election Code. Accordingly, election funds should be created to finance activities of candidates, registered candidates, political parties, which nominate candidates or have registered candidates, and referendum campaign groups (90.1). Election funds should be spent for their intended purposes, including: a) the financing of

<sup>113</sup> From August to November, a total of 14 activists, participants in the 2<sup>nd</sup> April 2011 peaceful rally, were sentenced by the court on criminal charges.

<sup>114</sup> Sections 156.2.3, 191.2.2, 225.5.2. of the Election Code.

organizational technical actions for the collection of signatures in support of the nomination of candidates or approval of referendum campaign group members, b) payment for the people to collect voters' signatures, c) pre-election campaigning expenses and information and consulting services, and d) payment for other expenses for work performed directly by legal entities and citizens during the pre-election campaign (90.3). The money transferred to the election funds accounts shall be used until Election Day, and using funds other than election funds for the pre-election campaign activities and collecting signatures is prohibited (90.4). A special election account that forms an election fund should be opened in a bank, as determined by the Central Election Commission and required by Para 91.1 of the Election Code.

The Election Code also establishes the limits of a candidate's election private fund assets, which cannot exceed 500,000 manats (EUR 474,399), and determines the range of sources of such funds.

- The special funds of candidates and registered candidates cannot be more than 500,000 manats (EUR 474,399);
- Funds of candidates and the political parties, which nominated the candidates, or political parties in a bloc may not be more than 150,000 manats (EUR 143,140);
- Voluntary donations of citizens or legal entities in respective amounts of no more than  
3,000 (EUR 2,862) and 50,000 manats (EUR 47, 713);
- Political parties and blocs of political parties, which nominated or registered candidates in more than 60 single mandate constituencies, may create a unified elections fund; and
- Observance of conditions on legal limits of party election funds should be indicated in political parties and blocs of political parties' statements. For the purpose of creating a unified election fund the party or the bloc of parties should open a separate bank account within 5 days of submitting the list of candidates nominated in more than 60 constituencies. Article 159 obliges the candidates to publish in the media the information on expenditures beyond certain limits, the legal entities that have made donations, the number of citizens who made donations exceeding certain amounts, the total amount received in and spent from an election fund.

Azerbaijani law also prohibits donations and assistance-in-kind or services to election funds of parties and candidates by the following entities: foreign countries, stateless persons, domestic legal entities of which more than 30% of the charter capital belongs to the aforementioned entities, international organizations and international social movements, State bodies and municipalities, State and municipal organizations and offices, and legal entities of which more than 30% of the charter capital belongs to the State or Municipality, military units, charitable organizations, religious associations, institutions, or organizations, and citizens under the age of 18 (90.2).

### **3.9.1. Transparency of the Election Fund**

According to the legislation, the parties and candidates are obliged to register the collection and expenditure of their election/referendum funds. They have to submit their financial reports to the relevant election commission in the order defined by the Election Code. The financial reports are required to include disclosure of the financial sources of the election funds, such as State aid transferred by the Election Commission (before cancellation), donations by citizens and legal persons, and “special funds of parties and candidates and to indicate amount of resources in national currency.” The Election Code in Section 77 requires publication of the financial reports of the parties and candidates.

Transparency of the election fund is provided through submission of the financial reports by the candidates. The first and second interim reports are sent to the Constituency Election Commission and the final report is submitted to the Central Election Commission (with a copy to the relevant Constituency Commission). (Article 94 of the Election Code) According to the Election Code, the Constituency Election Commissions and the CEC have to submit the information on collection and expenditure of election/referendum funds of parties, candidates, and referendum funds to the public media on a regular basis, but at least once every two weeks until voting day. The financial interim reports on election/referendum funds of parties, candidates and referendum campaign groups are to be published within five days upon receipt by the relevant election commission, via the public media, such as public television and radio companies or periodicals that are founded by the state bodies and organizations, or funded by the state budget.) The disclosure of this financial information is the responsibility of the election commissions and mass media: the election commissions are to submit financial information to the public media, which are obliged to publish them (Article 95.3 of the Election Code).

However, in practice, there is rather a formal approach to the issue of publicizing data on election funds. There have not been sufficient requests from the media about the financial aspects of elections, apparently due to the overall skeptical attitude about transparency in the country.)

#### 4. Party Funding

Political party funding in Azerbaijan is one of the most problematic areas for party development. Although party financing is regulated by a number of articles in major legislation on political parties, such as the Law on Political Parties (Articles 17-21), the Council of Europe institutions, such as The Venice Commission and GRECO, have stressed the necessity to improve legislation, introduce public financing for parties,<sup>115</sup> and address the issue of transparency of party funding.<sup>116</sup>

The GRECO Evaluation Team during its survey in Azerbaijan expressed concern that the financial shortages experienced by most of the parties and the political situation in the country may make them seek funding from hidden or even prohibited sources. This led to the conclusion that “the access of parties to the adequate subsistence resources is the most pressing concern.”<sup>117</sup> At the same time, the report further states that imposing additional financial and administrative requirements on the parties without provision of adequate funds “might put at risk their functioning and very existence.”<sup>118</sup>

The financial problems of political parties in Azerbaijan are a reflection of a system where there are strong ties between the political (official) and economic power, favoring distribution of national resources to the ruling party and at the expense of opposition parties. This circumstance is reinforced by prohibitions on other sources of financing, such as state financing and foreign sources on the one hand, and the lack of transparency mechanisms as envisioned in the law on the other. Therefore, it is necessary to consider the issue of public financing on a non-discriminatory

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<sup>115</sup> Evaluation Report on Azerbaijan, Transparency of Party Funding. (Theme II) Third Evaluation Round, GRECO, Strasbourg. 1 October, 2010.

<sup>116</sup> Para 22 Opinion on the Law on Political Parties of the Republic of Azerbaijan, Adopted by the Venice commission, 59<sup>th</sup> Plenary Session (Venice, 18-19 June, 2004).

<sup>117</sup> Ibid. Para 81

<sup>118</sup> Ibid.

basis, while at the same time addressing the issue of greater transparency of party funding in legislation.

The issue of funding and resources is critical for functioning of parties, as “ the economic and other resources available to an opposition party may matter more to it than the legal framework within which it operates”<sup>119</sup>

After the Azerbaijan presidential elections of 1998, the trends towards the greater monopolization of political and economic power had been observed. Informal control was established over major areas of the economy, primarily oil and gas resources, by the ruling elite. Even cheap commodities markets, combined with local – small and medium – businesses were monopolized.

The economic development in the conditions of state ownership of oil and gas resources against the background of slow rise of independent producers, primarily small and medium-sized businesses eased this process. This led to weak economic dispersion, which is a result of distribution of the resources away from the state to the societal actors. According to the scholar of the comparative politics, “pluralism prevailed in those states where the beneficiaries of privatization constrained otherwise dominant power of executive. Such pluralism was absent in ...Azerbaijan”<sup>120</sup>

Against this background, the weakening of the financial capacity of political parties was also influenced by the slow development of a middle class, independent from state control. The active social power base of the opposition parties was mainly low-paid, under- or unemployed, and other vulnerable segments of the population with low financial capacity to contribute to political party activities. On the other hand, the recruitment of a new class of people, who were educated abroad or employees of the service sector was slow, due to an increasingly oppressive environment for opposition political activities. This in turn made joining the opposition unattractive for the well-paid younger generation. Meanwhile, the majority of supporters of the ruling party, New Azerbaijan Party/ YAP, were state employees from government ministries, the health sector, and employees of the state education institutions (

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<sup>119</sup> CDL-AD (2010)025 Report on the Role of the Opposition in a Democratic Parliament adopted by the Venice Commission at its 84<sup>th</sup> Plenary Session ( Venice 15-16 October 2010). Para 40.

<sup>120</sup> Scott Radnitz The Color of Money. Privatization, Economic Disersion and the Post-Soviet “ Revolutions”. In Comparative Politics January 2010, PP. 127-146.

schools, high schools).<sup>121</sup> Despite this background, the legislation of the Azerbaijan Republic prohibited state financing of political parties.

#### 4.1. Public Funding

As it was mentioned in the previous chapters, the legislation of Azerbaijan does not provide for the state financing of a political party's general activities. This is despite the fact that the Election Code (before 22 June 2010 amendments) envisaged state support for the election candidates. The debate on the possibility of a new provision on state financing of parties was considered in a book by the Center for Strategic Studies under the President of the Republic of Azerbaijan (SAM),<sup>122</sup> as well as included a number of proposals initiated in the parliament by the representatives of political parties.<sup>123</sup> The SAM study acknowledges the importance of state financing for ensuring transparency in party activities and reducing their dependence on "various groups,"<sup>124</sup> but it also reveals highly debated questions such as, which parties should be eligible for state funding, when, and how much.<sup>125</sup> After the 2010 elections, which left major opposition party outside of the parliament, the public financing system of the parties, if adopted and applied to the parties only based on representation in the parliament<sup>126</sup> would most likely further strengthen the patronage trends, rather than boost a multiparty system. The Guidelines on Political

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<sup>121</sup> NDI, *Azerbaijan Presidential Election 2003, Elections Watch Report 1, September 15, 2003*, notes that YAP members dominate ministerial structures and local executive offices across the country. YAP also sponsors pro-government youth, women, veterans, and human rights organizations, and it is by far the largest and the best financed party in the country.

<sup>122</sup> Allahyarova Tahira, Mammadov Farhad. "Political Parties in Azerbaijan: From One Election to Another," SAM, Baku, 2010.

<sup>123</sup> Such proposals were initiated at different periods by YAP (Siyavush Novruz), Musavat party (unofficial parliamentary faction), Great Creation Party (Fazil Gazanfaroglu), and the Azerbaijan United Popular Front Party (Gudret Hasanguliyev).

<sup>124</sup> Allahyarova Tahira, Mammadov Farhad. "Political Parties in Azerbaijan: From One Election to Another," SAM, Baku, 2010. p. 78.

<sup>125</sup> The debate took place at the two day workshop, "Towards Transparency: The Election System in Azerbaijan and the Financing of Political Parties," organized by the OSCE Office in Baku in 2006.

<sup>126</sup> An official of the ruling YAP party, Siyavush Novruzov, suggested that if state financing of political parties was introduced, the officially registered parties would receive funding proportional to the number of parliamentary seats held by the party. (Azerbaijan to Adopt New Law on Political Parties, CaucasusReport RFE/RL, Caucasus Report, August 12, 2009).

Party Financing particularly stress, that in order “to ensure the equality of opportunity for the different political forces, public financing cannot only be limited to those parties represented in Parliament, but must rather be extended to political bodies representing a significant section of the electoral body and presenting candidates for elections”<sup>127</sup>. The Law on Political Parties, Chapter 4, states that parties should be financed at their own expense, without allocation of funds from the state budget, except for the financing of the election campaigns in accordance with the Election Code of the Republic of Azerbaijan. The amount of state funds allotted to the presidential candidates increased from 12,000 manats (10,800 EUR) per candidate in the 2003 presidential elections to 28,800 manats (25,880 EUR) per candidate in the 2008 presidential elections. The state aid in the 2005 parliamentary elections amounted to 410,400 manat (368,750 EUR), which divided among 2,052 candidates provided 200 manats (180 EUR) per candidate.<sup>128</sup> State financing was not provided for the 2009 municipal or 2010 parliamentary elections due to cancellation of state aid in elections through amendments to the Election Code in June 2010.<sup>129</sup>

Another minor form of the indirect public funding of political parties includes privileges on taxes. The parties as non profit organizations are exempt from the profit taxes on grants, membership fees and donations received.<sup>130</sup>

Indirect public funding is also stipulated in the Election Code for political parties in connection with elections. It includes funding such as transport expenses paid to registered candidates from the day of registration until the announcement of the election results and payments from the election commissions to the candidates of their average salaries (but no more than 20 times the legal minimum wage) from the allocated budget.

During the election period, free air time on TV and radio is allotted for the registered candidates to conduct debates, round tables, and campaign activities. However, the

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<sup>127</sup> CDL-PP (2000)6 Guidelines For Financing of Political parties, Venice Commission, Strasbourg, 6 December 2000.

<sup>128</sup> Para 29. Evaluation Report on Azerbaijan Transparency of Party Funding, (Theme II) Third Evaluation Round, GRECO, Strasbourg. 1 October, 2010.

<sup>129</sup> The cessation of state funding for candidates as a result of amendments to the Election Code on 22 June 2010 was justified by the fact that the candidates, who lost elections, failed to return funds back to the state. In the 2005 elections this amount per person was approximately 200 manats (180 Euros), which is by itself an insignificant sum, but against the background of a minimum monthly salary of 85 manats (78 Euros), its cancellation was more than a symbolic measure.

<sup>130</sup> Section 106.1.2 of the Tax Code of the Republic of Azerbaijan.

rules for such activities are defined by the Central Election Commission.<sup>131</sup> The norm for using paid airtime allocated by the TV and radio companies is specified in Article 77.1 of the Code and shall be determined by dividing the total amount allocated by the total number of presidential candidates.<sup>132</sup> As most of the international and domestic observation and monitoring reports testify, the implementation of the provisions on free and equal access to the media, however, has in most cases been problematic in Azerbaijan's elections.

One of the possible ways of strengthening the party system in Azerbaijan is providing them with free, or on a reduced rate, rental offices as a part of indirect funding. This would reinstate the previous practices of the early 1990s. Currently, the situation of access to party offices complicates the work of the major opposition parties that have insufficient financial resources.

Two opposition parties – Musavat<sup>133</sup> and the Popular Front<sup>134</sup> – were evicted from their downtown offices, while the ruling party New Azerbaijan Party (YAP) headquarters is located in newly renovated building in downtown Baku. The Popular Front Party still does not have an office in Baku. This circumstance is a clear infringement on citizens's right to freedom of assembly and freedom of association, as well as to one of the main guiding principles of freedom of associations for political parties – non-discrimination.

The paragraph 60 of the Guidelines on Political Party Regulation stresses, that

“Authorities should refrain from any measures which could privilege some political parties and discriminate against others”<sup>135</sup>

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<sup>131</sup> Article 189, para 2 of the Election Code of the Republic of Azerbaijan

<sup>132</sup> Article 189, para 4 of the Election Code of the Republic of Azerbaijan

<sup>133</sup> On 13 November 2003, the Musavat Party was evicted from the Shahriyar Culture Centre (located on the former Azerbaijan Avenue, now named after Zarifa Aliyeva), which it had occupied since 1992 and forced to move its headquarters to a new location in the Binagadi district of Baku.

<sup>134</sup> The Popular Front Party was evicted from its office (along with the newspaper Azadlyq, Bizim Yol, Turan information agency and IRFS) on 33, Khagani street by the decision of Economic Court n.1 in favor of the State Property Committee, whose head claimed that the mayor's decree of 1992 on unconditional use of the office by these structures cannot be the legal basis for their placement in this building. The court passed a verdict for eviction in a one-day trial, and half hour after the trial, the building was surrounded by the police (IRFS dispatch, 24 Nov 2006).

<sup>135</sup> CDL-AD(2010)024 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission Adopted by the Venice Commission at its 84<sup>th</sup> Plenary Session ( Venice 15-16 October 2010) p. 18.

## 4.2 Private Funding

The law specifies what the income of a political party may consist of: membership dues; proceeds from property rental; proceeds from the arrangements, circulation of press and articles, and other similar lucrative activities; proceeds in the form of donations; resources received in the form of payment of expenditures for the election campaign, and payments from local organizations. The financing of political parties by foreign States as well as by legal and natural persons from foreign states is prohibited in Article 17.

However, membership fees are not further regulated. The Law on Political Parties does not provide for any limit or restriction on such fees which may be flat or differentiated.<sup>136</sup>

According to Article 18 of the Law on Political Parties, the tax authorities shall supervise the sources of income of political parties, the amount of the gained resources, and the payment of taxes as provided in the tax code<sup>137</sup>.

While asserting the right of donations, the law prohibits donations from State agencies, charity organizations, or those associations that serve religious purposes, trade unions, or mass movements. There is no specification or explanation of the term “mass movement” in the law. The law also limits donations from people “granted with the purpose of gaining economic or political benefits,” with again no further explanation in the legal text (Article 19). The Venice Commission<sup>138</sup>, while supporting these objectives, has expressed doubts about their possible enforcement. Although the law asserts the necessity of disclosure of the sources of donations, including name, address and amount of each donation in a financial report, the law does not enforce the publication of such data. Therefore, as a rule, information about donations is not published. The Venice Commission suggested the following measures: 1) putting an upper limits on the amount of donations; 2) making public the name of donors and amounts above certain levels; 3) prohibiting

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<sup>136</sup> Para 34. Evaluation Report on Azerbaijan Transparency of Party Funding. (Theme II) Third Evaluation Round, GRECO, Strasbourg. 1 October, 2010.

<sup>137</sup> According to the article 101 of the Tax Code of the Republic of Azerbaijan of 11 July 2000 as physical persons they have to pay an income tax (14%) from salaries and honoraria, property tax (1%) – cars, buildings (article 202), in case of owning the car- a road tax (article 211.1.2).

<sup>138</sup> CDL-AD(204)025 Opinion on the Law on Political Parties of the Republic of Azerbaijan Adopted by the Venice Commission at its 59<sup>th</sup> Plenary Session ( Venice 18-19 June 2004), para.22

donors from receiving state contracts within a certain period of donation; and 4) severe sanctions for violations of the law<sup>139</sup>.

In the same opinion of 2004, the Venice Commission has also found the prohibition of the trade unions to make donations to the political parties as discriminatory due to the absence of similar restrictions on the employers or their organizations<sup>140</sup>.

According to Article 20 of the Law on Political Parties, a political party also has a right to property ownership. The law defines the permissible property of parties to include premises, equipment, publishing and printing houses, means of transport, and other property necessary for implementation of the tasks in the party's charter. Parties may also lease property on a contractual basis.

### **4.3. Transparency of party financial activities and funding**

Although overall the Law on Political Parties was assessed "as a good one and not overly descriptive" by the Venice Commission, a few concerns were expressed related to the effectiveness of provisions on prevention of corrupt donations to political parties<sup>141</sup>, and to the issue of membership, which excludes foreign and stateless nationals, and prohibition of donations by the trade unions.

According to the legislation, political parties are obliged to draw up accounts reflecting income and expenditures as well as the property, which have to be prepared at the end of each calendar year and include the accounts of its regional branches and indicate the number of party members paying dues.<sup>142</sup> The financial

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<sup>139</sup> Ibid.

<sup>140</sup> CDL-AD(204)025 Opinion on the Law on Political Parties of the Republic of Azerbaijan Adopted by the Venice Commission at its 59<sup>th</sup> Plenary Session ( Venice 18-19 June 2004),para 27.

<sup>141</sup> Among the wide variety of existing interpretations of the concept of corrupt donations, the definition given by Marcin Walecki stresses the irrelevance of the guidance of law in determining corruption, as the "law itself may be a result of political corruption." Instead, the author suggests the term "irregular, or informal political finance system," which "refers to legal contributions from the disreputable sources or acceptance of money in return for favours" (Walecki, Marcin "Chapter One. Political Money and Corruption: Limiting Corruption in Political Finance" in Money and Politics in Nigeria (ed. by Victor A.O.Adetula) DFID, IFES-Nigeria 2008, p.1). The Law on Political Parties of the Republic of Azerbaijan of 1992 (Article 19) states that "political parties may not receive donations granted with the purpose of gaining of economical or political benefit."

<sup>142</sup> Article 21 of the Law on Political Parties, 1992.

accounts must include the amount of donations, names and surnames of their donors, their addresses, and the amounts of individual donations.<sup>143</sup>

None of the laws regulating party activities or elections require guarantees that a professional financial audit of their accounts and financial reports be carried out. Based on this analysis of the legislation and with the aim of addressing the shortcomings in the financial provisions of the Law on Political parties, the recent GRECO (a body established under the aegis of the Council of Europe) report has recommended clearly defining and regulating donations, membership fees,<sup>144</sup> and other permitted funding sources in the Law on Political Parties and to align its financing provisions with the transparency standards set by the Electoral Code.<sup>145</sup>

Political parties are accountable to state agencies on the subject of their income, expenditures, and property. The financial account to the government includes territorial organizations and the number of party members paying fees.

The evaluation report of the GRECO further reflects concerns related to the various aspects of party funding, including transparency and legal provisions to prevent parties from corruption.<sup>146</sup> The report observes a number of legislative gaps in the reporting obligations of parties, monitoring, and sanctions by the Ministry of Justice.

The report also notes, that although Article 18.4 of the Law on Political Parties stipulates the supervision by the tax authorities of the sources of income, the amount of gained resources, and payment of taxes by political parties, as provided in the tax laws, the parties are not obliged to submit their annual accounts to the tax authorities or to any other State body. The tax authorities receive only the quarterly income tax declarations of the parties.<sup>147</sup> The tax authorities have access only to the documents related to tax collection and may inquire at the headquarters or local branches of the parties only if there is enough evidence indicating that there have been tax law violations.<sup>148</sup>

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<sup>143</sup> Article 19 Ibid.

<sup>144</sup> The membership fees of political parties are not regulated by the Law on Political Parties, but the internal party regulations and usually vary from 0,5% to 1% of a member's income.

<sup>145</sup> Para 86, Evaluation Report on Azerbaijan Transparency of Party Funding, GRECO, Strasbourg, 1 October 2010.

<sup>146</sup> Evaluation Report on Azerbaijan Transparency of Party Funding (Theme II) Third Evaluation Round, GRECO Strasbourg. 1 October, 2010

<sup>147</sup> Only staff salaries and proceeds from property are taxable.

<sup>148</sup> Para 60. Evaluation Report on Azerbaijan Transparency of Party Funding, GRECO, Strasbourg, 1 October 2010.

## 5. Women in Political Parties

### 5.1. Background: Women's political participation in historical context

The equal participation of women and men in all spheres is provided for in the Constitution of the Republic of Azerbaijan. The Constitution states that “everyone has equal rights and freedoms irrespective of race, nationality, religion, sex, origin, social position, convictions, political party, trade union organizations, status.”<sup>149</sup>

Women's suffrage in Azerbaijan has a long history. In 1918, the Parliament of the Azerbaijan People's Republic (the first Azerbaijan Democratic Republic) granted equal rights to women earlier than in some European countries. The emancipation of women at the turn of the 20<sup>th</sup> century was enhanced by the contribution of local oil magnates, who built secular schools for Muslim girls in the desire to emulate the most advanced states of Europe. Soviet policies further advanced women's rights, including through the introduction of a quota to guarantee minimum representation of women in the Supreme Soviet, Party structures and the Government. However, as a measure imposed from above, Soviet policy did not fully filter down to affect the prevailing norms of family and religion. The deeply-held beliefs preserved during the Soviet times were reflected in the post-Soviet status of women in the country. Women nominally enjoy the same legal rights as men (chapter 3, article 25, para 3 of the Constitution), but societal discrimination persisted, with gender-biased norms, attitudes and traditions preventing women from enjoying full equality to participate in economic and political life. One obstacle to de facto equality for women has been the traditional gender division of labor and attitudes to male and female employment. This explains the greater employment of women in the health and education sectors, the presence of women in lower-paid jobs, as well as the continued wage gap among men and women employed in similar sectors and positions.<sup>150</sup>

The liberalization of the first perestroika and that which occurred during the post-Soviet period created conditions for, and witnessed significant contributions of, women to the process of political change. Not unlike men, women were often

<sup>149</sup> Chapter 3, Article 25, para 3, Constitution of the Azerbaijan Republic, (1995).

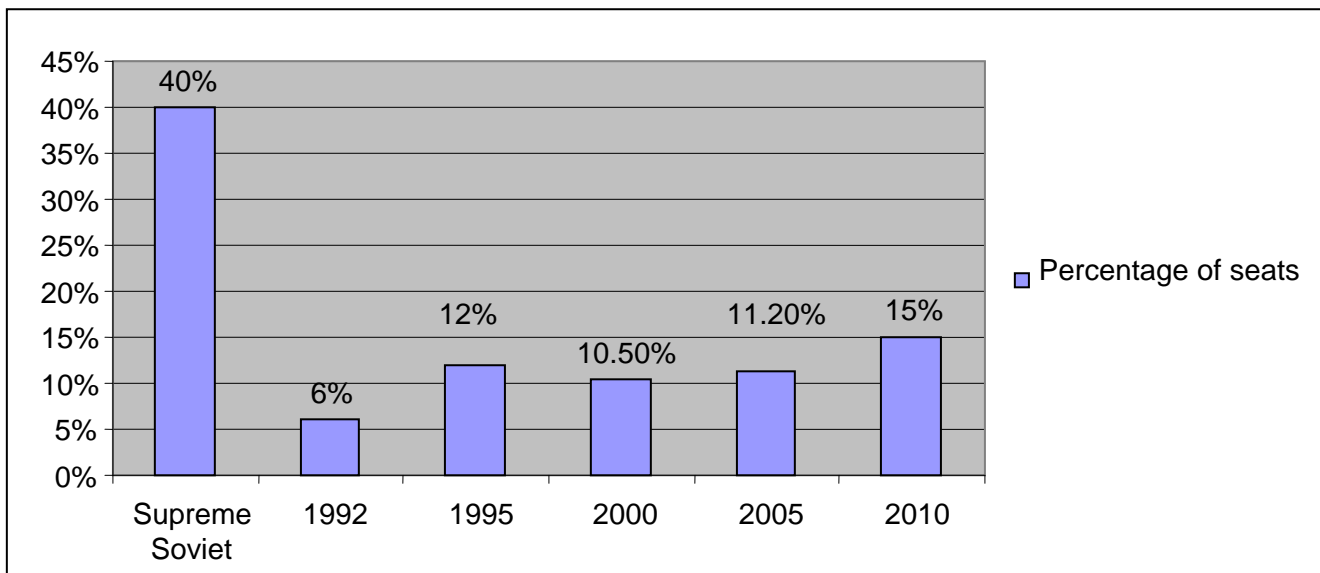
<sup>150</sup> Irada Ahmedova, “Gender Attitudes and Gender Equality in Azerbaijan,” LSE, UNDP, Development and Transition, Issue number 08/2007.

among the leaders of mass movements. Women members of the board of the Popular Front movement during the most critical periods of the power gap took a greater share of responsibility for managing the country's life at the end of the 1980s and early 1990s.

Women also played an active role in political party formation during this period. Although a minority, women were among the most active members of political parties. For example, in the 1990s, the trend of creating "women's branches" (similar to youth branches) of political parties spread and could be found in the Musavat Party, YAP, and the ANIP. The creation of women's branches, such as in Musavat, was an important stage in advancing women's political participation and achieving the introduction of a 25% quota for women's representation in all elected party organs in 2001. Such internal party measures introduced during this period helped to overcome obstacles to women's political participation caused by traditional barriers in communication between men and women, and facilitated women's efforts to reach higher-level positions in the elected organs of the party.

After consolidation of independence in 1992-1993, however, women were gradually replaced by men in decision-making positions, and thus were underrepresented in the government during the period of power sharing. By the end of the 1990s, almost all women who were founders, leaders, and activists of the national liberation political movement (The Popular Front Movement), such as Leyla Yunus, Arzu Abdullayeva, Novella Jafaroglu, left politics and moved to the civil society sector, predominantly the human rights sector.

The table below shows levels of women's representation in successive parliaments of independent Azerbaijan as compared to the Soviet period. The number of women in the government of post-Soviet Azerbaijan, deprived of the Soviet quotas for women, dropped significantly. While in the Supreme Soviet, 40% of the members were women, in 1992 the level of women's representation in the parliament of independent Azerbaijan stood at only 6%, increasing to only 12% by 1995. Table 6. Percentage of seats occupied by women in Azerbaijan's Parliament



*The table is composed by the author based on data from the Central Election Commission statistics reports.*

In the period after gaining an independence one political party – The Liberal Party in Azerbaijan was led by a woman. During the time Heydar Aliyev held power, the position of State Secretary was occupied by Lala Shovket. After her resignation in 1994, she formed an opposition party in 1995. The Liberal Party of Azerbaijan was officially chaired by Lala Shovket until 7 June 2003, when she resigned but remained an official leader of the party.<sup>151</sup> Lala Shovket was the only woman registered as a candidate for the presidency in 2003, and the official results showed that she received the third highest number of votes (3.6%). According to both independent observers and official data, when running for the 2005 parliamentary elections as a candidate of the Liberal Party in constituency 17 located in downtown Baku, Lala Shovket won a majority of votes in her constituency and thus secured a seat in the 2005 Parliament. However, in protest of the flawed elections, she refused to take her seat in the Milli Mejlis. While she remains the Leader of the Liberal Party, currently there is no woman occupying the position of official chair of any political party. Lala Shovket did not run in 2010 due to various points of contention about the elections.<sup>152</sup>

<sup>151</sup> There are two official leading positions in the Liberal Party - the “Chair” and the “Leader”, both of whom are elected. (para 4.7 and 4.8 of the Charter of Liberal Party).

<sup>152</sup> See, for example, page 66 on the unfair nature of elections.

## 5.2 The Legal and Policy Framework for Women’s Political Participation

The legal framework for women’s political participation includes the Election Code, the Law on Guarantees of Gender Equality, and the Law on Political Parties.

The Election Code asserts the principle of universal suffrage in Article 3: “citizens of the republic of Azerbaijan shall have a right to elect, be elected to, and participate in referendums, regardless of their race, ethnicity, religion, language, **gender**, origin, property status, official position, beliefs, affiliation with political parties, trade unions or other public associations, or any other status.” To ensure equal opportunities for women and men in political, economic, social, cultural and other areas of public life, and to eliminate all forms of discrimination on a gender basis, the law on gender equality was adopted by the parliament in December 2006. The amendment to Paragraph 5 of the Law on Political Parties introducing equality of men and women in political party activities, first adopted in 2004, is a positive provision that allows for greater legal protection of women’s rights in political activities. Specifically, it states that “the parties should be open to providing equal conditions for membership as well as create equal opportunities for men and women.”<sup>153</sup> However, without specific provisions on how this goal should be achieved, the article remains largely declarative in nature.

Azerbaijan has acceded to and/or ratified the most significant international conventions on the protection of women’s rights, including the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1995, and its Optional Protocol in 2000. The country has also developed a policy framework for gender equality, including a National Action Plan (NAP) based on the Beijing Platform for Action and the Millennium Declaration. The first National Action Plan on Women’s Issues for 2000-2005 was adopted by the Cabinet of Ministers in June 2000. The second National Action Plan on Family and Women’s Issues covers the period 2008-2012. An important step for the promotion of women’s rights was the adoption by the Azerbaijan Parliament on 23 June 2010 of the “Law on Prevention of Domestic Violence”.

The reality of the situation of women’s political participation must be contrasted to the favorable legislative framework. UNDP’s 2007 Human Development Report, which focused on Gender in Azerbaijan, stressed that women’s participation in

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<sup>153</sup> The Law on Political Parties (as amended 4 May 2004, 11 June 2004, 4 March 2005, 15 April 2005, 3 March 2006, 1 October 2007, and 9 October 2007). In Azerbaijani language.

social and political life has been determined by a common acceptance and approval of existing gender roles, often based on strong traditions. This has led to a situation where women suffer not only from structures of traditional gender roles but also from the perception of being “powerless” and “weak”.<sup>154</sup> The report states that “at present women’s representation and participation in politics and civil society is far from sufficient.”<sup>155</sup> While praising the progress achieved in legislation, the report includes recommendations for the government to develop “real mechanisms that would promote equalization in decision making capabilities, equal participation in governmental and political institutions, and elimination of discriminative practices in labor policy and employment.”<sup>156</sup>

Overall, women are underrepresented both in the government and in political parties. The UN Committee on the Elimination of Discrimination against Women expressed its concern about women’s “very low participation in political and public life, especially their severe underrepresentation in decision making bodies, including the Parliament, the Government, diplomatic service, the regional and local municipalities, and the higher levels of judiciary.”<sup>157</sup> The Committee called upon the Azerbaijani government to address this issue through national awareness campaigns about the importance of women’s participation in political and public life, in particular in rural areas, and to consider implementation of temporary measures in accordance with the provisions of CEDAW, along with establishing benchmarks or increasing quotas following the application of such measures.<sup>158</sup>

Among the reasons for the decreased political participation of women, the Human Development Report 2007 lists the following factors: elimination of the Soviet quota system, the growth of patriarchal attitudes in society, and the lack of an affirmative action policy to guide an increase in women’s representation in government bodies.<sup>159</sup> In addition, the lack of enforcement mechanisms to monitor

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<sup>154</sup> Azerbaijan Human Development Report 2007 *Gender Attitudes in Azerbaijan: Trends and Challenges*, UNDP, Baku, 2007, p.77

<sup>155</sup> Ibid.87.

<sup>156</sup> Ibid.

<sup>157</sup> Para 27, Concluding Observations of the Committee on Elimination of Discrimination against Women. Azerbaijan, 7 August 2009, CEDAW, United Nations. Available at: [http://www.iwrawap.org/committee/pdf/44\\_concluding\\_observations/azerbaijan.pdf](http://www.iwrawap.org/committee/pdf/44_concluding_observations/azerbaijan.pdf)

<sup>158</sup> Ibid., Para.28.

<sup>159</sup> Azerbaijan Human Development Report 2007, p.74

implementation of gender policy, including the NAP, has also contributed to the trend of women's decreased participation. The Alternative Report on Monitoring of Implementation of CEDAW Convention<sup>160</sup> suggests that the factors preventing women from more active participation in political and public life are the dominance of men in political structures, concealed discrimination in the distribution of male and female roles at the decision-making level, and the generally low level of social awareness of gender issues.

One of the positive steps for women's participation was an amendment<sup>161</sup> to the parliament's internal regulations providing for a mechanism of parliamentary oversight on implementation of the Law on Guarantees of Gender Equality. Article 21-1 of the Internal Regulations of the Milli Mejlis states that the respective executive agency, the State Committee for Family, Women and Children issues, which is responsible for monitoring implementation of gender equality,<sup>162</sup> in accordance with Article 20 of the Law on Guarantees of Gender Equality, should report annually to Parliament. So far, however, there has not been any reporting due to the absence in the Law on Guarantees of Gender Equality of a specific mechanism to realize the State Committee's oversight control over the law's implementation. According to a representative in the State Committee,<sup>163</sup> while articles 19 and 20 of the respective law stipulates that control over implementation is executed by the State Committee on Women, Family and Children,<sup>164</sup> they do not specify in what way this control is to be exercised. As a result, the State Committee on Women, Family and Children has developed a draft proposal for a mechanism of control, and has submitted it for consideration to the Cabinet of Ministers.

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<sup>160</sup> Alternative Report. Monitoring of Implementation of Convention on the Elimination of All Forms of Discrimination against Women in Azerbaijan, 2009, Baku. Available at: [www/gender-az/org.politics.report/stamp](http://www/gender-az/org.politics.report/stamp)

<sup>161</sup> Article 21-1 of the Internal Regulations of the Parliament (Milli Mejlis) was amended by the Law of 1 October 2007, № 424-IIIQD

<sup>162</sup> According to the decree of the President of the Republic of Azerbaijan of 29 November 2006, "On Implementation of the Law on Guarantees of the Gender (Men and Women) Equality" (Article 2), the State Committee on Women, Family and Children, a duty was imposed on the "respective executive organ" to monitor implementation of the gender policy.

<sup>163</sup> The author conducted a telephone interview with a representative of the State Committee of Women, Family and Children, Baku, 30 March 2011.

<sup>164</sup> Articles 19 and 20 of the Law on Guarantees of Gender Equality of 2006.

### 5.3 Trends in Women's Political Participation in Azerbaijan

The OSCE/ODIHR reported in 2003 that “none of the candidates addressed women’s rights or issues of special interest to women in any concerted way. The percentage of women members ranges from 45% in the ruling New Azerbaijan Party (YAP) to 24% in AMIP and 15% in Musavat. Only a handful of women serve as district party chairpersons or in other leadership posts in the party.”<sup>165</sup> The absence of women’s issues in the platforms of candidates is partly explained by a generally lower turnout of women in rural areas, in particular religious women in some Southern regions where the voting is often family-based and undertaken by men, who are considered heads of the family. For instance, in the 2004 municipal elections, the proportion of voting men to voting women was 76.2% to 23.8% respectively.<sup>166</sup>

Only 10% of all candidate applications for the 2005 parliamentary elections were submitted by women. Consequently, only 11.2% of the deputies in the 2005 Parliament were women.

In 2010, the OSCE/ODIHR Election Observation Mission (EOM), in its first interim report on the pre-election situation in Azerbaijan, noted that women continued to be underrepresented in the political life of Azerbaijan. The report stressed that the ruling party increased the number of women among its candidates significantly in comparison to 2005. However, the number of women among the opposition parties remains very low. The APFP-Musavat bloc has only five women among its 91 nominated candidates.<sup>167</sup>

It should be noted that against the background of a significant drop in the total number of candidate applications in 2010 as compared to the 2005 elections (2,327 in 2005 and 1,412 in 2010), the number of women who applied to the Central Election Commission to be candidates in the 2010 parliamentary elections actually increased by 3%. However, the increase in number of women candidates, mainly nominated by the ruling party, can hardly serve as an indicator that women in

<sup>165</sup> Republic of Azerbaijan. Presidential Elections, 15 October 2003, OSCE/ODIHR Election Observation Mission Final Report, Warsaw 12 November 2003, p. 16.

<sup>166</sup> Alternative Report, Monitoring of Implementation of Convention on Elimination of All Forms of Discrimination against Women in Azerbaijan, 2009, Baku. Available at: [www/gender-az/org.politics.report/stamp](http://www/gender-az/org.politics.report/stamp)

<sup>167</sup> Parliamentary Election in the Republic of Azerbaijan, 2010, OSCE/ODIHR Election Observation Mission, Interim Report No.1, 20 October 2010, pp 7-8.

general have greater opportunities for political engagement as a result of the amendments on gender equality to the Law on Political Parties. The amendments on gender equality were not preceded by public debate, but rather were introduced by instruction of the authorities after dialogue with international organizations and ratification of international conventions. The new composition of the Parliament, as elected in 2010, has 20 women out of 125 MPs or 15% (compared to 14 seats in the 2005 Parliament).

**Table 7. Number of registered women candidates in 2010 elections<sup>168</sup>**

<b><u>Political party</u></b>	<b><u>Number of women candidates</u></b>
YAP	27
Azerbaijan National Independence Party	5
Democratic Azerbaijan World Party (DADP)	5
Musavat Party	2
Adalat	1
Democratic Reforms Party	1
Communist Party	1
Popular Front Party	1
The United Popular Front Party	1
Classic Popular Front Party	1
Civil Solidarity Party	1
Citizen and Development Party	1
Not indicated party affiliation	5
Independents	42
Total	93

The total number of women candidates in the 2010 elections was 93; 22 of them were nominated by the ruling party YAP.<sup>169</sup> However, often low professional level

<sup>168</sup> Table composed on the basis of data obtained from the Central Election Commission.

<sup>169</sup> Central Election Commission statistics, available at:  
[http://www.cec.gov.az/en/parliamentary2010/statistics/woman\\_candidates](http://www.cec.gov.az/en/parliamentary2010/statistics/woman_candidates).

and preparedness of most of the female candidates (not unlike many male candidates), which was demonstrated during the TV debates, did not create an impression of politically-motivated participation. On the contrary, many prominent political and civil society women leaders did not run in the 2010 elections. This partly reflects the general apathy of the population, connected with disappointment in elections as an institution, but also has other, gender-related, explanations. When some women leaders were asked why they did not run for parliament in this election, they named several reasons, among which was lack of trust in the positive results of their efforts due to the unfair nature of elections, and the absence of sufficient finances for campaigning.<sup>170</sup> Women political leaders, who have the double burden of household and professional work, as compared to men, do not consider political activities favourably because of the low probability of success.

These conclusions are confirmed by the other studies. A survey conducted by the Public Union for Gender Equality and Women's Initiatives before the last municipal elections in 2009 in Azerbaijan revealed that the main reasons for the low participation of women in municipal elections were poor financial support (46.45%), double workloads both outside and inside the home (26.78%), too much housework responsibility (21.31%), and societal disapproval of women's participation in municipal governments (5.46%).<sup>171</sup>

Interestingly, however, while women took just 4% of seats in 2004, in 2009 this number increased to over 26%.<sup>172</sup> The heightened attention both from the government and the international organizations might be responsible for this increase. For example, there have been extensive trainings arranged with the support of the OSCE Office in Baku in the period between elections, in which 200 women participated.<sup>173</sup> At the same time, the State Committee on Women, Family

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<sup>170</sup> Interview of the author with the deputy chair of Musavat Party, Maryam Orujlu, (20 October 2010, Baku); Telephone interview with the leader of the Liberal Party Lala Shovket, (30 October 2010, Baku).

<sup>171</sup> Alternative Report,, Monitoring of Implementation of Convention on Elimination of All Forms of Discrimination against Women in Azerbaijan, 2009, Baku. Available at: [www.gender-az/org.politics.report/stamp](http://www.gender-az/org.politics.report/stamp)

<sup>172</sup> Oliver Jinks, The OSCE Office in Baku Promotes Gender Rights and Equality, 4 March 2010, available at: [http://www.osce.org/baku/item\\_2\\_42894.html](http://www.osce.org/baku/item_2_42894.html)

<sup>173</sup> Ibid.

and Children Affairs of the Republic of Azerbaijan has devoted a lot of activities in the region in this period of time<sup>174</sup>.

It is important to note that changes in the electoral system in Azerbaijan may also impact on women's political participation. Evidence suggests that women candidates stand a better chance of election to public office under proportional representation systems, as opposed to single mandate constituencies, as political parties may be more likely to propose a ticket with candidates that represent a broad range of interest and identity groups.<sup>175</sup> Re-introducing a mixed system may create a more level playing field for opposition parties, but also for women candidates.

#### **5.4 Internal Party Democracy and Women's Participation in Politics**

Women's political participation in Azerbaijan is strongly influenced by cultural and societal gender norms and ideas, as well as by the prevailing political environment and electoral rules. Nonetheless, internal political party rules and procedures can also play a significant role in determining the level and quality of women's political participation. The Council of Europe Venice Commission-ODIHR *Guidelines on Political Party Regulation*, for example, state that:

*Although not required by law, it is recognized as good practice that the internal functions of political parties respect the principles of non-discrimination and equality. Such principles may include measures to ensure party qualifications for membership, candidacy, and party activities that provide for the equal participation of women and minorities. While not legally mandated, such steps are seen as good practice given that both women and minorities have been subject to historical inequalities in the OSCE region and globally, which requires redress.*

The study of gender situation in Sweden, the country, which has been characterized by one of the highest percentage of women's representation in the parliament in

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<sup>174</sup> Interview with Rena Ibragimbekova, the chair of the department on psychology and gender Issues of the Baku State University, expert of the education department of the Cabinet of Ministers of the Republic of Azerbaijan, Baku, 4 March 2012.

<sup>175</sup> M.L. Krook and Pippa Norris, *Gender Equality in Elected Office: A Six-Step Action Plan*, OSCE/ODIHR 2011, p 23.

the world, suggests<sup>176</sup>, that along with the structural factors such as secularization, strength of social-democratic parties, and extended welfare state, education boom of the 60s, extensive entrance of the women into the labor market, as well as strategies of women's movement- there are other, more important factors responsible for the increase of women's representation in Sweden in the 1970s. In regards quotas the paper stresses, many studies conclude that "in all political systems , no matter what electoral regime, it is the political parties, not the voters, that constitute the real gatekeepers into elected offices."<sup>177</sup>

This is supported by the other studies of the significant increase of women's representation in Sweden in the 70s, which conclude, that "women's political representation depends on whether or not political parties have a strategic incentive to promote women."<sup>178</sup>

In Azerbaijan, the amendment to Paragraph 5 of the Law on Political Parties, which introduces the principle of equality of men and women in political party activities, is a positive step, in that it recognizes the important role that political parties play in facilitating women's political participation, particularly candidacy for public office. However, despite the importance of the legal provisions on gender equality in political parties, the current legislation on political parties does not contain specific provisions to ensure such equality (quotas or other special measures) and is essentially declaratory in nature only.

Meanwhile, there is a wide range of possible sanctions, which might be introduced in regards to the political party, which does not pursue a policy of creation of equal opportunities for women. Among them, the experts name the following- limitation of the passive voting right ( introduced in France, Slovenia) deprivation of the right of vote in the international organizations, financial sanctions ( withdrawal of state financing- France), limitation of the access to the free broadcasting on TV during election campaigns and other<sup>179</sup>.

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<sup>176</sup> Drude Dahlerup *Quotas- A Jump to Equality? The Need for International Comparisons of the Use of Electoral Quotas to Obtain Equal Political Citizenship for Women*. Paper prepared for workshop hosted by International Institute for Democracy and Electoral Assistance.( IDEA) on 25 September in Jakarta, Indonesia.

<sup>177</sup> Ibid.p.3

<sup>178</sup> Lenita Freidenvall *Women's Political Representation and Gender Quotas-The Swedish Case* Working Paper Series 2003:2 The Research Program on Gender Quotas. P.5.

<sup>179</sup> Pippa Norris and Nora Lena Krooke *Gender Equality in Elected Office: A Six Step Action Plan* Harvard University and Washington University in St. Louis, Baseline study for the OSCE/ODIHR *Handbook on Measures to Promote Women's Participation*, 2012.

Some parties have implemented measures internally to promote women's participation. For example, as mentioned above, women were active in political party formation during the period of perestroika. The women's branches established in parties such as Musavat, New Azerbaijan Party (YAP) and ANIP encouraged activists to lobby for women's political participation, including in higher decision-making positions within parties' elected organs, such as party boards. While recognizing that women's branches or sections can work against women by marginalizing their interests, the OSCE/ODIHR's *Guidelines* consider establishment of such branches as a positive measure for promoting women's participation in political party decision-making, activities and processes.

More recently, the issue of women's representation in the elected bodies of political parties has been a subject of debate in the leading parties. So far Musavat has been the only party to introduce a 25% party quota for women in all elected structures of the party. The main executive body of the party – the *Divan*, composed of 16 members – now includes four women, or 25%. Voluntary measures such as party quotas are recognized as an important measure for parties themselves to take action in promoting women's participation in party processes and decision-making.<sup>180</sup> However, this measure alone did not substantially increase women's participation, as other factors that contribute to undermining women's participation (such as poverty and lack of social protection of women) are not sufficiently addressed at the general government policy level. This highlights that women who obtain positions of authority within executive structures should also be empowered to influence policy and platform positions of parties in ways that address gender-based inequalities.

This trend coincides with the scholarly findings, that quotas do not automatically increase women's participation<sup>181</sup>. There are few factors influencing effectiveness of quotas, such as type of electoral system ( they work best in proportional representation system), placement in the party lists ( the higher place for women – the better outcome), degree of specification of the quota law implementation, sanctions for non-compliance.<sup>182</sup>

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<sup>180</sup> Points 85 (pg 43) and 101 (pg 48) of the *Guidelines on Political Party Regulation*.

<sup>181</sup> Tinker, I, 2002 “ Quotas for Women in Elected Legislatures: Does this Really Empower Women?” Paper Presented at WGPP Gender and Transnational Network Symposium, October 17-19, University of Illinois Campaign/Urbana.

<sup>182</sup> Grown, Caren, Geeta Rao Gupta, Aslihan Kes, 2005, Taking Action: Achieving Gender Equality and Empowering Women Achieving the Millennium Development Goals, UN Millennium project.p.108.

Besides quotas, the other ways to empower women participation are state policies, institutionalizing care responsibilities and strong women's movement. The studies show in the countries with the combined effect of policies of institutionalized care and policies of upholding civil rights resulting in 7% greater political participation of women <sup>183</sup>

It is important to note that changes in levels of women's participation are strongly correlated to the party in question. For example, women's participation has increased in the ruling party, but decreased within other parties. Women (as well as men) nominated by the ruling party enjoy greater access to resources and rewards. Belonging to the ruling party, for instance, increases one's chances of obtaining a seat in the parliament. In parliament, the salary of the deputy is 15 times higher than the minimum salary established in the country.

While the trend of worsening conditions for and financial weakening of opposition parties affects both men and women, it can have a disproportionate impact on women if opposition parties favour men as candidates in place of women in constituencies where such parties feel they have a chance at winning. This is particularly the case when men enjoy established networks of supporters, more access to financial and other resources, more time to campaign, and are better known to the electorate.

Inequalities that result in an uneven playing field between political parties as well as between women and men within parties can be addressed through political party and electoral legislation. Nonetheless, better regulating the processes and procedures that govern internal party functioning can also create a more level playing field for all political actors – both men and women. One of the most important processes to regulate is candidate selection or nomination. All political parties are encouraged to develop clear and transparent processes for selecting candidates as well as nominating or electing party members to decision-making positions, in place of closed systems and unclear selection criteria.<sup>184</sup> In their Opinion on the draft Election Code of Georgia, for instance, the Venice Commission and OSCE/ODIHR suggested to allot an additional funding for those political parties,

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<sup>183</sup> Ibid.p109.

<sup>184</sup> Point 131 (pg 57) in the *Guidelines*. The *Guidelines* also recommend that parties strive towards gender balance in the composition of the nomination board.

who nominate more than 20% women as their candidates in elections, as well as to provide for a gender balance in electoral commissions.<sup>185</sup>

Women politicians in Azerbaijan also noted inadequate resources for campaigning and the double burden of domestic and professional work as barriers to their participation and success as candidates. While they may receive more support as ruling party candidates, these are issues that affect women candidates in political parties across the OSCE region, whether in power or not. Again, making internal party procedures for allocating resources – especially funds for campaigning, access to party property, access to media and party communication organs – more equitable and transparent can make a notable difference.<sup>186</sup> Lastly, women candidates nominated by the party should be qualified and properly prepared to represent the party and campaign on clear positions. This may require special training and preparation programmes to support potential women leaders and women candidates, especially in the fields of public speaking and debate. As noted above, partially as a result of OSCE-supported trainings, women's representation increased dramatically following the 2009 municipal elections.

## 6. Enforcement

### 6.1 Regulatory authority

The main regulatory authority to investigate or supervise party activities on its own initiative is the Ministry of Justice. During the election period, this authority rests with the Central Election Commission. The Ministry of Justice is part of the executive branch (Cabinet of Ministers), the Minister of Justice) is appointed by the President, and funded from the national budget. The Cabinet of Ministers is the supreme executive agency of the executive of the President of Azerbaijan and is subordinate and accountable to the President of the Republic.<sup>187</sup>

The Central Election Commission<sup>188</sup> is elected by the Parliament and consists of 18 members. The composition includes 6 members who represent the relative) majority

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<sup>185</sup> CDL(2011)094 Draft Joint Opinion on the Draft Election Code of Georgia, Venice Commission and OSCE/ODIHR, Strasbourg/Warsaw, 1 December 2011.

<sup>186</sup> *Guidelines*, 179, 181, pgs 70-71.

<sup>187</sup> Paragraph II, III, article 114, of the Constitution of the Republic of Azerbaijan.

<sup>188</sup> Chapter 4, article 24, Election Code of the Republic of Azerbaijan.

party in the parliament, 6 independents (independent lawyers, who have not worked in public service), and 6 members of the parties representing minority parties in the parliament. “The nomination of two candidates shall be agreed upon by the interested parties, states the article 24.3: the political party constituting a majority in Milli Mejlis shall agree on one nominee and the representatives of the political party constituting minority in the Milli Mejlis shall agree on the other nominee”. In practice, the composition of the CEC appears unbalanced, as 4 independents are usually appointed and are mainly representatives of the state organizations, while parliamentary minority includes, along with opposition, the pro-government parties.

In many states the political party registration authority lies with courts, like in Bulgaria – with Sofia city court, or in Estonia – with ordinary courts, while in some states the competent authority is the Election administration bodies, like Director General of Elections in Canada<sup>189</sup>. One possible way to achieve greater impartiality of the regulatory authority is to transfer it to the courts. However, in Azerbaijan although Constitution guarantees independence of three branches of power, the judges are appointed by the President.

Taking into account that in practice the parliament also exercises an insignificant degree of independence and Ministries of Justice or Taxes are parts of executive power, there are no mechanisms to ensure the independence of the supervising body over party activities. Similarly, the current composition of the Election Commission, , have so far not allowed non-partisan regulation of elections during and in between the election periods. The Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Law on Amendments and Changes to the Electoral Code of the Republic of Azerbaijan,<sup>190</sup> suggested that the composition of the election commissions would be revised in a manner to ensure that it is not dominated by the pro-government forces and enjoy the confidence of political parties. However, this recommendation was not implemented by the authorities of Azerbaijan, which affected the quality of election commissions’ functioning during and in between elections.

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<sup>189</sup> CDL-INF(2000)1 Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures. Adopted by the Venice Commission at its 41<sup>st</sup> plenary session ( Venice 10-11 December, 1999) p.19.

<sup>190</sup> The Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Law on Amendments and Changes to the Electoral Code of the Republic of Azerbaijan, 2008

For instance, during the 2005 parliamentary elections, the OSCE/ODIHR Observation mission<sup>191</sup> assessed the counting as bad or very bad in 41 per cent of observed counts, while the tabulations at the constituency level - as bad or very bad in 31 per cent of 90 ConEcs visited. Between elections, despite the changes to the boundaries of election constituencies, according to the same report, these changes did not appear to have the purpose of ensuring equal suffrage. The CEC data showed that 38 constituencies surpassed the 10 percent limit of variations, and 14 of them were above 15 percent.

This means, that the requirement of the Venice Commission on providing for the regulatory authority with greater independence at this stage of state building is not achievable and the Ministry of Justice is perceived as most non-partisan agency of all other state bodies to monitor activities of the political parties.

## 6.2. Responsibility

A political party's Congress elects an Inspection Commission that has the following functions:

- inspect the conformity of the activities of the elected and other organs of the Party with the provisions of the Charter and the Program,<sup>192</sup>
- inspect the financial and economic activities of the party,<sup>193</sup>
- within two weeks review and decide about complaints concerning the application of administrative measures on members of the party,<sup>194</sup>
- and report to the Political Council about results of inspection and work to the Congress.<sup>195</sup>

A party member, the members of the governing bodies, and the primary (or regional) organization of the party may be held responsible for violations of a party's

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<sup>191</sup> Parliamentary Election in the Republic of Azerbaijan OSCE/ODIHR Observation Mission Final Report Warsaw, 1 February 2006

<sup>192</sup> IV. 7.5 Charter of the Umid Party

<sup>193</sup> Charter of the Adalat Party

<sup>194</sup> Article 14, Charter of the Civil Solidarity Party.

<sup>195</sup> Article 2.7 Charter of the Democratic Reforms Party

Charter. The independence of the Inspection Commission is underlined through the prohibition of membership in the Commission by members of the Political Council or Executive Board.<sup>196</sup>

### 6.3. Specific limitations/regulations

The Law on Political Parties prohibits membership in political parties for the following categories of people while they are serving in office: the president of the Republic of Azerbaijan; presidents, vice-presidents and judges of all the courts of the Republic of Azerbaijan; The Human Rights Commissioner; servicemen and staff of the organs of the public prosecutor's office, justice, internal affairs, national security, frontier guards, customs, finance, taxes, the state-owned press – except for the technical and service staff of these organs, the leadership and creative staff of the State TV and Radio Broadcasting company of the Republic of Azerbaijan, and religious figures.

The legislation also prohibits abuse of state resources. In general, Article 19 of the current Law on Political Parties states that state agencies “shall not have the right to make donations to political parties.”

More specifically, the abuse of state resources (including administrative) is prohibited by the Election Code of the Republic of Azerbaijan. Paragraph 2.6.15 of the Election Code prohibits people participating in elections to use administrative, municipal, or other public resources beyond the conditions prescribed in the Election Code. The Code also states that “abuse of the post of a person with the purpose of influencing the results of elections shall result in liability as stipulated by the Criminal Code of the Republic of Azerbaijan” (11-1.2).

In practice, however, the OSCE/ODIHR observation missions during all the elections noted abuse of administrative resources. The OSCE/ODIHR observation mission's final report on Azerbaijan's parliamentary election in 2005, for instance, notes, that “local executive authorities continued to interfere with the elections process and this was recognized by the President in his 25 October decree. A quarter of the more than 550 complaints registered before the polling day with the CEC concerned violations and interference of local executives authorities and other

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<sup>196</sup> IV. 7.5 Charter of the Umid Party

state bodies on candidates and election commissions”<sup>197</sup> The OSCE/ODIHR observation mission report on Azerbaijan presidential elections in 2008 observed, that “The President toured the country extensively in his official capacity, inaugurating numerous new infrastructural facilities. These visits were widely covered in the media, blurring the distinction between the official activities of the incumbent and his campaign”<sup>198</sup>

#### 6.4. Sanctions

Article 15 contains a description of responsibility and sanctions for violations of the law on political parties. Violations can give rise to criminal, administrative, financial, or other levels of responsibility.

In cases where political parties have violated the legislation on political parties, they shall bear responsibility as provided for in the law. If a political party commits an act that deviates from the aims or tasks listed in the party’s charter or runs counter to the country’s laws, the Ministry of Justice may issue a warning in writing to the leading body of that party. However, according to the opinion of the GRECO Evaluation Team, the legislation lacks the clear and precise definition of infringements by political parties of financing regulations of the Law on Political Parties, which give rise to the criminal, administrative sanctions applicable in such cases.<sup>199</sup> Thus, the GRECO report recommends a clearer definition of the infringements of the existing and yet to be established regulations on transparency of election campaigns as well as general party funding. There should be introduction of effective, proportionate, and dissuasive sanctions for these infringements, in particular by extending the range of penalties available.<sup>200</sup> The GRECO report quotes authorities in listing the range of such actions, as stipulated by the Law on Political Parties, which are – warning and liquidation of the party.<sup>201</sup>

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<sup>197</sup> Parliamentary Elections, Republic of Azerbaijan, 6 November 2005, OSCE/ODIHR Election Observation Mission Final Report, Warsaw, 1 February 2006, p. 18.

<sup>198</sup> Presidential Elections, Republic of Azerbaijan 15 October 2008 OSCE/ODIHR Election Mission Observation Final Report, Warsaw, 15 December 2008, p. 2.

<sup>199</sup> Para 97, Evaluation Report on Azerbaijan Transparency of Party Funding, GRECO, Strasbourg, 1 October 2010.

<sup>200</sup> Para 98, Ibid.

<sup>201</sup> Para.72, Ibid.p.18.

Article 16 contains the conditions for the liquidation of a political party. If a political party commits the acts referred to in Paragraph 4 of Article 4 of the Law on Political Parties, it shall be liquidated by court decision. These acts are: establishment and functioning of a party that has the purpose or method of operation to overthrow or change forcibly the constitutional order of the Republic of Azerbaijan or violate its territorial integrity; to advocate war, violence and brutality; to instigate racial, national and religious hatred; or to perpetrate other acts contradictory to the constitutional order of the Republic of Azerbaijan and incompatible with its international legal obligations. A political party may be liquidated by court decision if it recommits the acts referred to in Paragraph 3 of Article 15 of this law, which are: if a political party commits an act that deviates from the aims and tasks determined in its charter or runs counter to the existing legislation. A motion to suspend a political party shall be submitted by the Ministry of Justice of the Republic of Azerbaijan. When admitting the issue of liquidation of a political party for examination, a court may, if necessary, temporarily suspend the activity of that political party pending final decision of a court.

## **7. The amendments proposed by the government of the Republic of Azerbaijan to the Law on Political Parties in October 2011<sup>202</sup>**

The draft amendments to the Law on Political Parties include a number of important provisions that reflect the recommendations of local and foreign actors, including European and international organizations, such as the Venice Commission and GRECO. The document contains clauses related to the foundation of parties, their functioning, requirements as to their structure, and improving transparency of the financial activities of the parties. At the same time, certain amendments were either not improved or represent a drawback from the point of view of international standards of the political party legislation. For instance, in the general remarks of its Opinion on the draft amendments to the Law on Political Parties, the Venice Commission observes, that some issues identified in the Venice Commission opinion in 2004 have not been or have been addressed only partially in the draft law.

The first part of the amendments concerns the foundation, registration, structure, and functioning of political parties. There is a clear extension of the range of

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<sup>202</sup>CDL (2011)036. Draft Amendments to the Law on Political Parties of the Republic of Azerbaijan European Commission for Democracy through Law (Venice Commission) Strasbourg, 1 July 2011,

restrictions on political party activities in the new draft Law.<sup>203</sup> The second paragraph of Article 4 of the draft amendments to the law contains restrictive principles on party creation: “the political party may not be established upon professional, racial, ethnic and religious criteria.”<sup>204</sup> Most importantly, however, is that the number of members required to register the party was increased 5 times, as compared to the original law – from 1,000 to 5,000.<sup>205</sup> The Venice Commission noted, that “the new threshold is formidably high and puts a burden on citizens, who try to exercise their rights under article 11 of the EHCR”, and called it “disproportionate and not necessary in democratic society”<sup>206</sup> Due to the criticism of the provision by the Venice Commission, it was withdrawn from the draft text submitted to the hearings in Milli Mejlis in April 2012.

The restrictive provisions continue in amendments to 4.4. from the list of restrictions on party activities in the original law,<sup>207</sup> i.e. “The establishment and functioning of the political parties, which purpose or method of operation is to overthrow or change forcibly the constitutional order of the Republic of Azerbaijan or to violate its territorial integrity, to advocate for war, violence and brutality, to instigate racial, national and religious hatred, to perpetrate other acts contradictory to the constitutional order of the Republic of Azerbaijan and incompatible with its international legal obligations shall be prohibited.”The words “to overthrow or change forcibly” were replaced with “which aims at changing” (‘of constitutional order and secular nature of the Republic of Azerbaijan’).<sup>208</sup> However, because the proposed amendment was criticized by the Venice Commission<sup>209</sup>, following the discussions between the rapporteurs and the drafters of the amendments, the word “forcibly” was kept in text.

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<sup>203</sup> Ibid, para.4.1

<sup>204</sup> Ibid. para 4.2

<sup>205</sup> Ibid. para 4.3.

<sup>206</sup> CDL-AD(2011) 046 Opinion on the Draft Law on Amendments to the Law on Political Parties of the Republic of Azerbaijan Venice Commission, (Strasbourg 19 December 2011, Opinion No. 631/2011.Para 18. p.6.

<sup>207</sup> Law on Political Parties of the Republic of Azerbaijan of 1992, para 4.4.

<sup>208</sup> CDL (2011)036. Draft Amendments to the Law on Political Parties of the Republic of Azerbaijan Venice Commission, Strasbourg, 1 July 2011, Para. 4.4.

<sup>209</sup> CDL-AD(2011) 046. Opinion on the Draft Law on Amendments to the Law on Political Parties of the Republic of Azerbaijan Venice Commission, (Strasbourg 19 December 2011, Opinion No. 631/2011

There are other new restrictions presented in the proposed Amendments. For instance, while the original law did not prohibit party activities or statements in case the party has not received a response from the Ministry of Justice regarding its registration, the new law states (Article 14.2) that “except for actions, necessary for the establishment and registration, speaking in public or acting on behalf of political party which has not undergone state registration or participation in organization of its activity or its functioning shall be prohibited.” In addition, Article 19 of the new law specifies that speaking in public or acting on behalf of the liquidated political party or participation in illegal organization of its activity or its functioning shall be prohibited.”<sup>210</sup> Commenting on this amendment, the Venice Commission noted, that it was not clear why a given association of citizens which aspire to become a political party would speak on behalf of an existing party<sup>211</sup>. The Venice Commission found it important to attract again the attention, as it has done in its previous opinions, to the fact, that non-registration as a political party can never be a basis to deprive anyone of the rights to freedom of speech, assembly or association<sup>212</sup>.

The amendments have a large number of provisions on the structure and functions of parties. Some amendments cover gaps in the original legislation, such as the disposal of property of the organizational committee after foundation of a party. Taking into account that the requirement of internal party democracy is an important factor for the development of parties in democratic societies, additional reference to the Congress as a supreme leading body of the party in amendment 10.1 to article 10 can be viewed as positive.

The new Law did not review and take into account the commentary of the Venice Commission and GRECO regarding prohibition of receiving funds from public associations and foundations and trade unions. In the new amendments, both prohibitions were preserved. (Article 17) At the same time, the amendments establish a deadline for application for the state registration of political parties with the submission of the “document, certifying the number of party members” within a month from its constituent Congress.<sup>213</sup> This would be the deadline for the relevant body of the executive to respond to the political party that has applied for

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<sup>210</sup> CDL (2011)036. Draft Amendments to the Law on Political Parties of the Republic of Azerbaijan Venice Commission, Strasbourg, 1 July 2011, Para 16.9.

<sup>211</sup> Ibid. para 35.

<sup>212</sup> Ibid. para

<sup>213</sup> Ibid. para 5-1.6.

registration. However, this does not improve the existing legislation, as it does not address the issue of the parties waiting for years for answers to their registration applications from the Ministry of Justice (for example the case of the Green Party registration). Regarding the specific rules of registration of the political parties the draft refers to the provisions contained in the Law “On State Registration and State Registry of Legal Persons”.

Venice Commission has also noted<sup>214</sup>, that there is no amendment encouraging participation of women in political life, and referring to the code of the good practice in the field of political parties, recommended that the legislation should include corresponding provisions “to ensure that women are able to participate fully in political parties as a fundamental means for the full enjoyment of their political rights”.<sup>215</sup>

The Amendment to Article 9 replaces the words “international legal instruments on human rights and freedoms ratified by the Republic of Azerbaijan” and replaces it with more general reference to “international agreements, which it is a Party to.”<sup>216</sup> Against the background of the proposed amendments that include greater specification of requirements for party foundation, structure, and functioning, this provision relating to the responsibility of the State towards the parties, has become, in contrary, more general. In addition, the amendments to the already short list of obligations of the State before the parties, withdrew the obligation for the “establishment of the State Guard service and the arrangement of this provision” as indicated in Article 13 of the original law. The new amendments include an important provision to Article 13 on public (state) financing of the parties,<sup>217</sup> which did not exist in the original law.

Venice Commission acknowledges that main improvement of the draft law is an introduction of the public funding system. The provision 13 now states that “the state shall render financial assistance to political parties through the allocation of funds from the state budget in accordance with Article 17-1 of this law.”<sup>218</sup> It further states

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<sup>214</sup> CDL-AD(2011) 046. Opinion on the Draft Law on Amendments to the Law on Political Parties of the Republic of Azerbaijan Venice Commission, (Strasbourg 19 December 2011, Opinion No. 631/2011 para 13.

<sup>215</sup> CDL-AD(2008) 021 Code of Good Practice in the field of Political Parties adopted by the Venice Commission at its 77<sup>th</sup> Plenary Session

<sup>216</sup> Ibid. para 11.1.

<sup>217</sup> Ibid. para 16.2.

<sup>218</sup> Ibid.

that the “Leading bodies of a political party, which has undergone state registration, following the address to be made by the relevant body of the executive power shall submit their decisions and explanations with regard to issues related to the observance of the charter of the political party to that body.”<sup>219</sup> This is a rather unclear clause, which allows for a wide interpretation of the provision by the state authorities vis-à-vis the party to be financed from the budget. Article 17-1 was added to the Law on Political Parties of 1992 with new provisions related to the public funding and greater transparency in party spending and accountability.

Article 17-1 defines the conditions and rules of allocation of funds from the state budget. According to the amended article 17-1.1, the funds should be allocated annually and shall be indicated in a separate line in the state budget. The Law however does not indicate necessary minimum percentage of the budget allotted to the party functioning. In fact, it can be so small, that 10 % which is left for the extra-parliamentary political parties may turn into a purely symbolic figure. The order of distribution of the state funds, as 17-1.2 states, allows only 10 percent of funds to be distributed among parties and candidates who did not receive seats in the parliament, but earned at least 3 percent of valid votes. The amendment states that “40 percent of funds shall be equally divided between those political parties represented in the Milli Mejlis of the Republic of Azerbaijan and 50 per cent shall be divided proportionately to number of elected deputies.”<sup>220</sup>

At the same time, in Article 17 of the draft Law the list of the sources, which the parties are prohibited to be financed from has been specified and extended as compared to the list in Article 19 of the original Law. The original law prohibited donations or contributions from state agencies, foreign states, as well as legal and natural persons, citizens of these states, charities or religious organizations, trade unions, mass movements, or donations with the purpose of gaining economic or political benefits.

*Donations.* The draft Amendment lists, in addition to the aforementioned, municipal bodies and their subordinate entities (17.2.2), legal persons with more than 30% of interests that belong to the state or municipality (17.2.3), stateless persons (17.2.5), persons under age 18 (17.2.6), legal persons of the Republic of Azerbaijan with more than 30% of interest in chartered capital which belongs to foreign states, foreign legal persons, foreigners and stateless persons (17.2.7), international

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<sup>219</sup> Ibid

<sup>220</sup> Ibid.17-1.2

organizations and international public movements (17.2.8), military units (17.2.9), public associations and foundations, religious entities (17.2.10), trade unions (17.2.11) or anonymous persons, who fail to provide information on identity (17.2.12).

Article 19 of the original Law was amended by the additional provisions related to the prevention of corrupt donations. For instance, paragraph 19.3 states that persons making contributions to a political party may not demand or accept, directly or indirectly, material or other means, any privilege or advantage, give consent to such proposal or promise in lieu of donation of accepted or promised donation. The amendments include a number of specific provisions directed to greater transparency of party financing activities. Article 21 obliges the parties to submit their annual financial statements to the relevant body of executive power not later than 1 April of each year (21.2), the number of party members paying membership dues should be indicated in the financial statements (21.3), financial statements of the territorial organizations of political parties shall be inserted into the financial statement of the political party (21.4), political parties shall publish annual financial statements in the mass media along with their auditor's opinion (21.7). However, as the GRECO report stressed in paragraph 88, the greater "transparency requirements can be effective only if the parties have the necessary financial means to comply with them, which presently appears to be applied only to one single party."<sup>221</sup>

In the particular situation in Azerbaijan, where all elections since 1993 have been criticized by the OSCE/ODIHR election observation missions for not meeting international standards (see the relevant chapters of this study) and the major opposition parties have been left outside the parliament after the last 2010 parliamentary elections, the current provision which allocates 90 per cent of state funds to the parties represented in the parliament, and is divided proportionally, does not address the problems stressed in the GRECO report<sup>222</sup> that the ruling party and pro-government parties, which are dominating the parliament, are in the advantageous position for campaign financing *vis-à-vis* the extra-parliamentary

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<sup>221</sup> Evaluation Report of Azerbaijan. Transparency of Party Funding. GRECO, Strasbourg, 1 October 2010, p.24.

<sup>222</sup> Para 81. of the GRECO report stresses that "The GET is concerned that financial shortages endured by most of the political parties and political situation in the country may induce them to seek them for funding from hidden or even prohibited sources. The GET was left with the clear impression, that in the current situation access of the parties to the adequate subsistence resources is the most pressing concern"(Evaluation Report of Azerbaijan. Transparency of Party Funding. GRECO, Strasbourg, 1 October 2010, p.21).

opposition. This in turn reinforces the trend of patronage and the existing one-party dominated political system.

The article 19, which deals with liquidation and suppression of political parties, according to the Venice Commission provides for “relevant body of executive power” to apply sanctions ( such as warnings and taking the party to the court) if the political party breaches the legislation. The Venice Commission criticized both the unclear definition of the monitoring body, and the fact, that this is an organ of executive power, rather than an independent body. This opinion is based on the Guidelines on Political Party Regulations which require that regulatory authorities must remain neutral and objective dealing with the political party registration ( where applicable”, political party finance, and regulation of party activities”<sup>223</sup> The fact, that Ministry of Justice is part of the executive branch undermines its function as a neutral body. However, as it was mentioned in the previous chapters at this stage the Ministry compared to all other state agencies is perceived as the most relevant body to monitor the political parties activities. Yet, for the future the transfer of the monitoring function from the executive body to the elected and more neutral one would be more relevant to the democratic standards. Overall, the new amendments add the following dimensions to the existing legislation:

- They specify requirements for the structure, foundation, and functioning of the party, introduce the system of public funding of parties and include a number of important provisions directed at greater transparency of party financing.
- At the same time, they narrow the space for political party formation and functioning by introducing a new range of restrictions.
- While the introduction of the provision on financing parties from the state budget is a positive step, the rules of their distribution, as defined by the suggested amendments, reinforce the current power balance of domination of the ruling party and pro-government parties, strengthen patronage trends with the effect of further weakening the opposition and, consequently political pluralism and the system of checks and balances.

The new amendments do not improve the current legislation in regards to parliamentary party activities, as the clause on public financing does not encourage the creation of factions, groups, and coalitions in the parliament,

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<sup>223</sup> CDL-AD (2010)024 Guidelines on Political Party Regulations by OSCE/ODIHR and Venice Commission Adpted by the Venice Commission at its 84<sup>th</sup> Plenary Session ( Venice 15-16 October 2010).

limiting financing for the support of individual candidates or parties in the parliament.

## 7. Conclusions

Party formation in Azerbaijan has been shaped by the traditions of the pre-Soviet political experience (industrial capitalism and the First Democratic Republic), Soviet legacies, and specific post-Soviet conditions of transition. A major factor that influenced the development of political parties in the post-Soviet period was the vicious circle of increasing political monopoly reinforced by the availability of rich resources (oil revenues) at the disposal of authorities without adequate institutional checks and balances.

The following factors in Azerbaijan's regulatory framework and its' practical application have contributed to the current status of political parties:

- the excessive power of the executive branch, further strengthened by the lifting of the two-term limit for the president in 2009;
- the limited possibilities of the legislative to influence the executive's policies, and a lack of independence of judiciary;
- the elimination in 2002 of the proportional election system for parliamentary elections;
- the hindered implementation of other laws that affect party development, such as the Law on Freedom of Assembly and the Law on Media;
- the weak financial basis of the parties on account of the absence of public funding;
- repeated patterns in elections that have been assessed negatively by international observer missions – leading to disappointment of the electorate and loss of party influence; and
- the structural effect of an oil-rich economy that has strengthened political patronage and “pacted democracy”<sup>224</sup>

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<sup>224</sup> The term used by Terry Lynn Karl to describe the distorting effect of the oil-based economy on the relations between the government and opposition, which is that the regime is held together due to the agreement among different elite groups through distribution and access to oil rents. In Azerbaijan, this process took place more in the form of political patronage, where oil rents were used to weaken the major opposition parties, rewarding loyal parties by access to power and resources.

The Council of Europe experts stress that the “lack of a strong opposition in the parliament may lead to a form of extra-parliamentary opposition in which protests may be expressed in violent forms on the streets...”<sup>225</sup> According to the Venice Commission Report, the nature and strength of parliamentary opposition depends on an electoral system with proportional representation usually connected to much better parliamentary representation, than the first past the post system.<sup>226</sup>

However, in the post-Soviet reality both systems may be manipulated so as to reach the same objective of political control and monopoly of power. According to a Russian political scientist, “in the case of the “first past the post” system such conditions for registration of candidates might be created that will in effect deprive the citizen of the right to run for elections, while in case of proportional system, its effect would be dependent on how freely citizens can create parties.”<sup>227</sup> The author stresses the potential influence of a parliament with real power, unlike a parliament that has only formal powers, for the positive development of political parties.

As this report has showed, economic factors have played no less important a role in party development in Azerbaijan than political factors. Among the reasons for the weakening of the financial capacity of political parties in Azerbaijan, has been the slow development of a middle class that is independent from the state control, strong patronage system and harassment of donors to the opposition groups, The active social power base of the parties has been low paid and under- or unemployed. Other vulnerable layers of population have substantially low financial capacity. On the other hand, the recruitment of a new class of students, who have been educated abroad and employees of the service sector has been slow, due to the increasingly oppressive environment for opposition political activities. This has made prospective membership in the opposition unattractive for the younger, better-paid generation. Meanwhile, the major social and- member base of the ruling party YAP has been state employees from ministries and the health and education

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<sup>225</sup> Conclusions by the General Rapporteurs (MM Gross, Whitmore and Tarschys) to the Forum for the Future of Democracy meeting in Stockholm/Sigtuna 13-15 June 2007, in Power and Empowerment – The Interdependency of Democracy and Human Rights. Directorate General of Democracy and Political Affairs, Council of Europe, June 2008, para.11, p. 23.

<sup>226</sup> Report on the Role of the Opposition in the Democratic Parliament, Venice Commission (Venice 15-16 October 2010), para 29

<sup>227</sup> Kynev, Alexander, “The Peculiarities of the InterParty Struggle in Russia’s Regions: Struggle of Interest Groups and Imitation of Partyism. <http://www.memo.ru/2009/12/12/kynev.htm>

sectors.<sup>228</sup> Against this background, over the last two decades the legislation of the Azerbaijan Republic has prohibited direct financing of the parties by the state.

Another important factor influencing political party formation has been the development of an economy with state ownership of the major sector of economy – oil and gas resources against the background of slow development of business independent from state market producers, primarily small and medium business.

Thus, the trends of political developments, first of all weakening political pluralism and party formation after 2005 were affected by the major oil inflow, high oil dependency of Azerbaijan's economy and the state monopoly over major resources. The state monopoly preventing economic dispersion allowed to develop system of political patronage, which undermined conditions for development of well functioning parties. Moreover, the state monopoly over resources combined with the legal prohibition of the public financing for the political parties left the opposition with little, if at all, resources for their effective functioning.

Azerbaijan is a country with a booming economy based on significant oil revenues, with income per day from the oil industry at US \$ 60 million (US\$ 20 bln per year).<sup>229</sup> These resources could give the country's leadership a unique opportunity to boost development of multi-party system through introduction of public financing of political parties. The recently published book on political parties by the Center for Strategic Studies under the President of the Republic of Azerbaijan discusses the possibility of adoption of a new law on political parties. The project of the new law is seen by the authors as a legal defense of the parties from their marginalization. But as this Report has shown in analyzing the Law on Political Parties, the problem is not so much about the legal framework of party formation and functioning, but in the implementation of the laws, not least in regards to the principles of equality and non discrimination in application of the law. While the idea to rewrite the law is perceived as controversial by the opposition parties, there appears to be consensus on the possible public (state) funding of the political parties. Combined with greater transparency of the elections, and re-introduction of the proportional system of

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<sup>228</sup> The NDI *Azerbaijan Presidential Election 2003, Elections Watch Report 1, September 15, 2003* notes that YAP's members dominate ministerial structures and local executive offices across the country, it also sponsors pro-government youth, women, veterans, human rights organizations and is by far the largest and the best financed party in the country.

<sup>229</sup> Parliamentary Candidate Gubad Ibadogly Spotlights the Oil Revenue Spending of Azeri Government Azeri Report, Baku, 27 October, 2010, [http://azerireport.com/index.php?option=com\\_content&task=view&id=2439&Itemid=42](http://azerireport.com/index.php?option=com_content&task=view&id=2439&Itemid=42)

elections, this measure may both prevent parties from marginalization and compensate for the structural effect of the oil based economy.

An analysis of the composition and legislative status of groups and factions of the Azerbaijan parliament shows the necessity to promote greater pluralism and empowerment of voices of parliamentary minority and opposition with the help of measures observed in the international parliamentary practice, such as introduction of quotas for the parties in minority in the leading positions of the parliament and the parliamentary committees, including appointment of the representative of opposition as a chair of the committees, monitoring the government action, such as committees on budget or finance; stimulation of formation of factions in the parliament through lowering threshold of number of deputies required for formation of factions and allotting financing and other benefits for their functioning; and introduction of provisions on “qualified” majority/minority.<sup>230</sup>

In the context of current national debates on possible state financing, introduction of legal provisions for greater transparency and improved standards of financial reporting, auditing, monitoring and sanctions should be taken into consideration during the review of the legislative framework of party activities.

The improved transparency and monitoring of party funding will lead to overall improvement of the party system only if the party’s stance vis-à-vis government will not influence implementation of the possible state funding and related provisions if adopted.

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<sup>230</sup> A qualified majority rule means giving the minority the negative power to block decisions, most often used for decisions of the particular importance, such as Constitutional amendment, delegation of sovereignty etc. A qualified minority rule means giving the minority a positive competence to itself initiate and adopt a decision. This is the most often used for procedural issues, related to the oversight and scrutiny. (para. 67, Report on the Role of the Opposition in the Democratic Parliament, Venice Commission (Venice 15-16 October 2010).

## **Key Recommendations**

Conditions in Azerbaijan should allow all political parties to fully participate in the democratic process. The political party system in Azerbaijan is a basic element of democracy, and the regulation of political party activities must promote pluralism and democratic governance. The regulation of the functions, activities, and organization of political parties and their role in elections, as well as women's political participation, must be updated and improved in order to guarantee political liberties and a pluralistic political environment.

### **Improvements on Regulations of Political Parties in Elections**

In order to ensure pluralism, the legal framework in Azerbaijan must provide for equal treatment for all political parties and candidates. The choice of electoral system should assist in the attainment of a minimum standard for democratic elections. Political parties in Azerbaijan are directly impacted by both the choice of system and access to elections. Therefore, it is recommended to:

1. Re-introduce a mixed election system to replace the current majoritarian system. Currently, all 125 members of parliament are elected in single-mandate constituencies. Substituting a proportional system for 50% of the parliament would help ensure the representation of opposition political parties.
2. Increase the election period to 120 days (now 60 days) and the campaign period to 60 days (now 23 days). The Election Code was amended in June 2010 to reduce the election period, thereby limiting the candidates' ability to campaign and reach out effectively to voters.
3. Re-introduce the financial deposit required for registration of a candidate. As an additional guarantee and protection against the voluntary rejection of registration, it should not exceed the levels of the average salary in the country. To ensure an equal playing field for all candidates, both men and women, financial deposits must be applied equally to all political parties and must not be set excessively high to prevent candidates with limited resources to stand for election.
4. Simplify the procedure of registration of candidates in elections, removing the provision for collecting signatures for the candidates nominated by the parties or bloc of political parties, as opposed to the thorough scrutiny of signatures for independents., as in order to get a state registration the party is already

going through a thorough procedure of scrutiny of 1,000 signatures. Currently, there is a two-step registration procedure, whereby candidates must be nominated and submit not less than 450 valid supporting voters' signatures. The current practices have led to many denied registrations. There should be adequate time to collect and file signatures. Citizens must also not be required to sign as a supporter for only one party.

5. Guarantee the balanced composition of all election commissions. The current formula establishes the dominance of pro-government people on the commissions because the composition requires that the commissions reflect the representation of political parties in the parliament. In practice, the decisive majority of ruling party supporters (both as members of the commissions and chairpersons) leads to less confidence in the impartiality of elections.
6. The internal functions and methods of political parties should be generally free from state interference. The parties themselves should be able to, according to the Law on Political Parties, introduce categories and levels of membership without penalty. Specifically, the category of "supporters" of political parties should be added to the Law on Political Parties.
7. The absence of the timeframe within which the Ministry of Justice shall respond to the party's application request allows to drag this period of legal uncertainty indefinitely, which significantly complicates activities of the parties. Re-introduce the deadline by which the Ministry of Justice should consider the registration of a political party (1 month) based on the text of the Law on Political Parties.
8. To ensure a non-restrictive interpretation of the Freedom of Assembly for parties by executive authorities.

### **Improvements of regulations on the role of political parties in the Parliament**

The strength and development of a pluralistic political party system in Azerbaijan, and an effective and strong parliament (Milli Mejlis), are closely linked. A parliament in which all MPs and factions – regardless of whether they support the government or not – have the same status and equal rights of participation, expression and association, is a parliament that is representative of the people. In particular, International and European standards underline the importance of minority and opposition MPs as well as their factions being given the rights and resources that can enable them to play an active role in parliamentary business, and to exercise

their responsibility to conduct a critical and effective opposition, holding the government of the day to account and overseeing its implementation of policies. Likewise, political parties are strengthened as a vehicle for the representation of citizen interests if they can form coherent and representative factions in parliament. It is clear that in Azerbaijan, the excessively high minimum number of deputies for the formation of factions is a disadvantage to the opposition parties and MPs, in particular those with a lower level of parliamentary representation. In addition, the provisions in internal regulations and the Law on the Status of Deputies, regulating the rights and position of opposition factions in the work of the parliament are relatively weak.

Therefore, in order to strengthen pluralism in the parliament, it is proposed that:

1. Quotas be established for the adequate participation of opposition factions and MPs in the key parliamentary positions, such that they would have a right to nominate a certain number of chairs and/or deputy chairs of parliamentary committees, leaders and deputy leaders of multilateral (to the OSCE, NATO, and Council of Europe Parliamentary Assemblies) and bilateral parliamentary delegations;
2. The Internal Regulations of the Milli Mejlis be amended to include the rights of speaking time for the opposition factions and MPs during debates, as well as the right to control the agenda of debate during a specified time (for instance, an “opposition day” once a week); opposition MPs should also have the right to speak from the main podium;
3. The transmission of parliamentary debates on television be restored, and that in addition transmission via radio and the internet be considered;
4. The Internal Regulations of the Milli Mejlis and the Law on the Status of the Deputy of the Mejlis be brought into line, in particular to clarify and strengthen the rights of the faction in both documents, and to establish in law (and not only in the Internal Regulations) the right to form a faction;
5. Article 43 of the Internal Regulations of the Milli Mejlis be amended to lower the minimum number of deputies required to form a faction, in line with accepted practice in other parliamentary democracies, and in order to guarantee opposition parties a stronger voice and more rights in participation in parliamentary business and the management of parliament. The minimum number of MPs should be lowered to 5 MPs (4% of total MPs) out of a total of 125, as opposed to the current very high number of 25 MPs (20% of MPs).

6. The Internal Regulations of the Milli Mejlis be amended to establish the possibility for independent MPs and MPs who cannot join any other faction in parliament to join together for a “technical” faction, in order to guarantee their full participation in parliamentary business;

### **Improvements of regulations on the funding of political parties**

7. Pursuant to Article 1 of Recommendation (2003) 4 of the Committee of Ministers of the Council of Europe, Common Rules against Corruption in the Funding of Political Parties and Electoral campaigns that the state should – within reasonable limits – support political parties by:
  - Introducing public financing for political parties, based on a non-discriminative approach and establishing a base sum for any registered party, which participated in the last elections
  - Developing strict criteria for eligibility for funding above the base sum for those parties that have obtained:
    - i. at least one seat in a minimum of one of the last three parliamentary elections
    - ii. at least 1% of national votes in the last three parliamentary or presidential elections
    - iii. require that party financial reports be disclosed in a way, which provides for easy and timely access by the public.
8. To provide a wider range of sanctions that can be utilized before resort to the liquidation of the party.
9. To place upper limits on donations, to create a legal mechanism of protection of donors against intimidation and only after that make public the names of donors and amounts above a certain level, and apply strict sanctions for breaches of the law.
10. In the provisions related to types of prohibited activities to make clear distinction between the parties advocating constitutional changes by peaceful means and by means of force.
11. To amend article 22 Liability for Breach of the Law with detailed description of what the liability for breach of the law entails, and who may seek to enforce the law.

## **Improvements of regulations regarding women's participation in political parties**

Women's participation is a critical component of representative democracy, and political parties can and should play a key role in facilitating women's political participation. The Law on Political Parties provides for the equal participation of men and women in political party activities. Nonetheless, women as political party members and as candidates may be disadvantaged by limited resources, a less well-established political network of supporters, and by continuing gendered stereotypes that undermine women as political actors. Therefore, it is recommended that:

1. Women are more likely to be nominated as candidates by political parties under proportional representation systems than in majoritarian ones; therefore, consider re-introducing a mixed electoral system as a means to enhance the representation of opposition parties as well as women in parliament.
2. Re-introduce legal quotas to ensure a minimum percentage of women are nominated as candidates for parliamentary elections. In the event that the mixed proportional representation system is re-established, consider the introduction of a "zipper" quota to ensure that women are placed high enough on the list to win seats, as well as the establishment of enforcement mechanisms.
3. In line with the Law on Political Parties provision guaranteeing equality of men and women in political party activities, political parties should consider introducing voluntary measures to promote women's participation, including in leadership positions. These measures may include the introduction of internal party quotas for women's membership, nomination of women as party candidates, and women's representation in candidate selection bodies.
4. Political parties should ensure that women and men have equal access to party resources and that existing party resources are allocated equally, including funds for campaigning, use of party property, and equal access to public radio and television airtime. Special measures to support candidates

with limited resources, including women, should not be considered discriminatory.

5. To better prepare both male and female candidates for campaigning and participation in elected office, political parties should introduce equal opportunities for men and women to participate in capacity and skills development trainings focused on platform development, public speaking and professional debating skills.
6. To provide in legislation a clause on direct additional financing for each woman- candidate .
7. Similar to equal parent leave, to introduce a state supported "leave" for a husband during the wife's campaign to share the family burden
8. If and when the proportional system is introduced, and upon introduction of public funding, some portion of it should be linked to the proportion of women, nominated as candidates by the parties and included in party lists.
9. The government should introduce amendments directed to enforcement of the gender policy in political parties, ranging from a publication of the list of the parties with worst record of gender balance to limitation of the state financing of such parties.
10. Equal representation of both sexes in electoral commissions should be guaranteed.

## **Annexes**

## ANNEX 1.

The Law on Political Parties of the Republic of Azerbaijan. (without recent amendments).

CDL-REF(2011)035

- 2 -

### LAW OF THE REPUBLIC OF AZERBAIJAN ON POLITICAL PARTIES

*(adopted on 3 June 1992; amended by the Laws of 25 June 1992, 5 November 1996, 5 October 2001, 2 July 2002, 30 December 2003, 4 May 2004, 11 July 2004, 4 March 2005, 15 April 2005, 3 March 2006, 1 October 2007, 9 October 2007 and 5 March 2010)*

#### Chapter I

##### General Provisions

##### Article 1. Definition of political party

For the purposes of this Law, political party shall mean an association of citizens of the Republic of Azerbaijan pursuing common political ideas and aims, and participating in the political life of the country.

Political parties, taking as a basis their functions and aims compatible with the Constitution and laws of the Republic of Azerbaijan, shall take an active part in the formation of the political will of the citizens of the Republic of Azerbaijan.

##### Article 2. Legislative framework of the establishment and functioning of political parties

The legislative framework of the establishment and functioning of political parties shall consist of the Constitution of the Republic of Azerbaijan and this Law as well as other legislative acts of the Republic of Azerbaijan adopted in accordance with them.

#### Chapter II

##### Principles of establishment and functioning of political parties

##### Article 3. Principles of establishment and functioning of political parties

Political parties shall be established and function on the basis of the principles of freedom of association, voluntariness, the equality of rights of their members, self-government, legality and publicity.

##### Article 4. Conditions for the establishment of political parties

Political parties shall be constituted upon the territorial criterion. Functioning of primary organizations, committees and other organizational structures of political parties in the State bodies of the Republic of Azerbaijan shall be prohibited.

The initiators of establishing a political party shall convene a constituent congress (conference) or general meeting, and adopt the charter and set up the leading bodies.

In order to get registered, at least the membership of 1000 citizens of the Republic of Azerbaijan in a political party shall be required.

The establishment and functioning of the political parties, which purpose or the method of operation is to overthrow or change forcibly the constitutional order of the Republic of Azerbaijan or to violate its territorial integrity, to advocate for war, violence and brutality, to instigate racial, national and religious hatred, to perpetrate other acts contradictory to the constitutional order of the Republic of Azerbaijan and incompatible with its international legal obligations shall be prohibited.

The establishment and functioning of political parties of foreign States, as well as their branches and subsidiaries in the territory of the Republic of Azerbaijan shall not be allowed.

##### Article 5. Forms of functioning of the political parties

Parties shall carry out their political activities in the following ways:

- to exert influence on the formation of public opinion pursuant to their charters;

- to encourage the political activity of their members;
- to put forward the candidatures of their members to the elective State bodies;
- to influence the activity of the legislative and executive bodies of the Republic of Azerbaijan in accordance with their charters;
- to exert influence on the formation of internal and foreign policy of the Republic of Azerbaijan by elaborating political and social programs.

**Article 6. Charter of a political party**

A political party shall have a charter available to everyone for the acquaintance.

The following shall be enshrined in a charter:

- name, aims and functions of the political party;
- structure of the political party;
- conditions and procedure of joining the political party and secession from it;
- rights and duties of the members of the political party;
- disciplinary measures not contradicting the laws of the Republic of Azerbaijan that might be imposed on the members of the political parties and the grounds for imposition thereof;
- sanctions not contradicting the laws of the Republic of Azerbaijan that might be imposed on the territorial branches;
- powers and rules of organization of the leading bodies of the political party, terms of their office;
- procedure of adoption and implementation of decisions and forms of supervision;
- conditions, forms and terms of convocation of meetings of the members of the party and their representatives;
- sources of the funds and other property of the political party;
- procedure of amending of the charter of the political party;
- procedure of termination of the functioning of the political party and destiny of its property.

**Article 7. Name of a party**

The name of a party, the abbreviator of its name as well as its symbols shall differ from the names and symbols of the other parties registered in the Republic of Azerbaijan.

In cases, where the name of a party is changed, it shall be re-registered as provided for in this Law.

**Article 8. Membership in a political party**

Political parties shall have registered membership.

Members of political parties shall be those citizens of the Republic of Azerbaijan who reached the age of 18, joined the party voluntarily, accepted its charter and programme, and possess legal capacity.

During the term of their office, presidents, vice-presidents and judges of all the courts of the Republic of Azerbaijan, The Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, servicemen, employees of public prosecutor's office, justice, internal affairs, national security, border service, customs, finance, taxation, courier communication service bodies, State-owned press bodies, with the exception of auxiliary and technical staff, members, director general and deputy directors general of Broadcasting Council of Public Television and Radio Broadcasting Company, members of the Management Board of Central Bank of the Republic of Azerbaijan, religious figures may not be members of political parties.

The persons enumerated in Paragraph 3 of this Article shall suspend their membership in political parties during the all period of their election, service or office.

Joining to the political party shall be available for men and women on the same conditions and equal opportunities shall be created for them thereof.

**Article 9. Rights of members of a political party**

The rights of members of a political party shall be defined in its charter and may not contradict the Constitution and laws of the Republic of Azerbaijan, international legal instruments on human rights and freedoms ratified by the Republic of Azerbaijan.

Participation or non-participation of a citizen in the activity of a political party may not serve as a basis for the restriction of his/her rights and freedoms, or barring him/her from discharging of the duties defined by law, except for the cases referred to in Article 8 of this Law. Requiring of indication of the affiliation to any political party in official documents shall not be allowed.

Each member or group of members of a party shall have the right to freely express their will.

**Article 10. Expression of will in the bodies of a political party**

Procedure of the expression of will in the bodies of the political party shall be set forth in the charter of the party.

**Article 11. International relations of political parties**

Political parties may join to international public (non-governmental) associations, maintain direct international relations, and conclude relevant agreements.

**Chapter III****Political parties and the State****Article 12. Rights and duties of political parties**

For the implementation of the aims and tasks defined in their charters, programme documents and other acts, the political parties shall:

- disseminate freely the information about their aims and activities;
- establish political blocs, unions, federations and associations by uniting on a voluntary basis;
- take part in a democratic way (individually, in a bloc or union with other parties and organizations) in the elections of the President, parliament and other elective bodies of the Republic of Azerbaijan, in the formation of the bodies of executive power of the Republic of Azerbaijan;
- influence in a democratic way the drafting of decisions of the State bodies;
- represent and protect the interests of their members in the State bodies and nongovernmental entities;
- discharge other functions provided for in this Law and in other legislative acts of the Republic of Azerbaijan.
- Political parties may not interfere with the activities of State bodies and officials.
- Political parties have the right to disseminate information about their activities, to popularize their ideas, aims and programmes, to establish mass media, and to hold meetings, demonstrations and other mass arrangements within the procedure defined by law.
- The leading bodies of political parties shall be based only in the territory of the Republic of Azerbaijan.

**Article 13. Rights and obligations of the State vis-à-vis political parties**

The State shall guarantee the respect for the rights and legitimate interests of political parties, the creation of equal legal conditions for the implementation of the tasks set forth in their charters in accordance with the Constitution and laws of the Republic of Azerbaijan, as well as for the circulation of their documents through the organs of the State-owned press, the protection and security of the leading bodies of parties and, for this purpose, the establishment of a State guard service and the arrangement of its provision.

The interference with the activities of political parties by State bodies and officials shall not be allowed, except for cases provided for by law.

**Article 14. State registration of a political party**

A political party shall be subject to State registration at the relevant body of executive power of the Republic of Azerbaijan.

For State registration of a political party an application containing the signatures of the members of its leading bodies and indication of the places of residence of each of them shall be presented within one month as of the date of the adoption of the charter. The charter, minutes of the constituent congress (conference) that adopted the charter, the document attesting the number of the members of the party shall be attached to the application.

Any amendments introduced into the charter of a political party shall be subject to State registration within the procedure and terms as determined for State registration of political parties.

As of the date of obtaining the State registration, a political party shall be regarded as a legal person as provided for in the legislation of the Republic of Azerbaijan.

State registration of a political party shall be refused if its charter is inconsistent with the provisions of Articles 3, 4 and 5 of this Law, or its founding documents are not in compliance with the legislation, as well as if a party under the same name has previously been registered.

If State registration is refused, written information thereof shall be given to the applicants by indicating the provisions of the legislation, which the charter has been found to be inconsistent with.

An appeal with respect to the refusal of State registration may be lodged in accordance with administrative procedure and / or may be lodged with a court.

Parties may possess emblems, banners, pennants and badges as their symbols. The symbols shall not serve for advocating for the aims referred to in Paragraph 4 of Article 4 of this Law.

Relevant body of executive power of the Republic of Azerbaijan shall be entitled to demand from the leading bodies of a political party which has undergone state registration to present their decisions, and to seek explanations from them with regard to issues related to the observance of the charter of the party.

**Article 15. Liability for violations of the legislation on political parties**

Violations of the legislation on political parties shall give rise to criminal, administrative, financial or other liability as provided for in the legislation of the Republic of Azerbaijan.

In cases, where political parties violate the legislation on political parties, they shall bear liability as provided for in the legislation of the Republic of Azerbaijan.

If a political party commits an act that deviates from the aims and tasks determined in its charter or runs counter to the existing legislation, the Ministry of Justice of the Republic of Azerbaijan may make a warning in written to the leading body of that party.

Activities of political parties which impede elimination of conditions resulting in state of emergency may be suspended as provided in the legislation.

**Article 16. Liquidation of a political party**

If a political party commits the acts referred to in Paragraph 4 of Article 4 of this Law, it shall be liquidated by a court decision.

A political party may be liquidated by a court decision if it re-commits the acts referred to in paragraph 3 of Article 15 of this Law.

A motion on liquidation of a political party shall be submitted by the Ministry of Justice of the Republic of Azerbaijan.

Court may suspend the activity of that political party in cases and manner provided in the legislation of the Republic of Azerbaijan until the taking of the final decision.

#### **Chapter IV**

#### **Financial maintenance of the functioning of political parties**

##### **Article 17. Financing of the activities of political parties**

The activities of political parties shall be financed at the expense of these parties, without allocation of funds from the State budget, except for the financing of the election campaigns in accordance with the Election Code of the Republic of Azerbaijan.

Financing of the activities of political parties by foreign States as well as by legal and natural persons of foreign States shall be prohibited.

##### **Article 18. Incomes and expenditures of political parties**

The resources gained by political parties in the form of currency or wealth having currency equivalent shall be their income. The benefits gained as a result of exemption of a political party from the generally undertaken obligations shall also be regarded as income.

The following shall be regarded as income of a political party:

- membership dues;
- proceeds from the property;
- proceeds from the arrangements, circulation of press outlets and articles, and other similar lucrative activity;
- proceeds in the form of donations;
- resources received in the form of payment of the expenditures for the election campaign;
- payments of the local organizations;
- other proceeds.
- The following shall be regarded as expenditures:
- expenditures incurred for the current activities;
- expenditures incurred for activities of the departments of the political party and for the information;
- expenditures incurred for the relations with the public and conducting of elections;
- payments to the local organizations;
- loan interest;
- individual expenditures;
- other expenditures.

The tax authorities shall supervise the sources of income of political parties, the amount of the gained resources and payment of the taxes as provided for in the tax legislation.

##### **Article 19. Donations**

Parties shall have the right to receive donations. The following shall have no right to grant donations to political parties:

- State agencies;
- the organizations, which serve exclusively charity purposes or religious purposes from the standpoint of the nature of their actual activities in accordance with their charters (founding documents);
- trade unions;
- mass movements.

Besides, political parties may not receive donations granted with the purpose of gaining economical or political benefit.

The amount of donations granted in favour of political parties shall be included into the financial account, and the name (surname) of the donator, his/her address, the amount of the donation shall be indicated.

**Article 20. Ownership of parties**

The ownership of parties may contain premises, equipment, publishing and printing houses, means of transport, as well as other property necessary to implement the tasks set forth in the charter.

The right to property of parties shall be protected by the legislation of the Republic of Azerbaijan.

Parties may use the premises and other property in accordance with the contracts on debt or lease concluded with other persons.

The ownership of parties may not contain the land, industrial enterprises, production unions and cooperatives; parties may not be engaged in business or commercial activity.

The possession of parties of the armament, explosive substances and other materials causing threat to the life and health of citizens (including threat to the environment), their stocking or preservation shall be prohibited.

**Article 21. Financial statement**

Parties shall draw up account documents reflecting the income and expenditures as well as the property situation to be accounted of.

The financial statement shall consist of income and expenditures parts, as well as the statement about its property.

The statements of territorial organizations shall also be included into the financial statement of the party.

The financial statement to be drawn up at the end of each calendar year shall indicate the number of the party members paying membership dues.

## **ANNEX 2.**

### **LAW OF THE AZERBAIJAN REPUBLIC ON NON-GOVERNMENTAL ORGANIZATIONS (PUBLIC ORGANIZATIONS AND FUNDS) (2000) (unofficial translation)**

#### **Section I. General Provisions**

##### **Article 1. Objective of this Law**

This Law regulates the relations concerned with establishment and operation of social communities and foundations. In this Law, the term "non-governmental organization" includes social communities and foundations. This Law determines the rules for establishment, operations, reestablishment and liquidation of non-governmental organizations, and defines their activities, administration, and relations with government bodies. This Law shall not apply to political parties, trade unions, religious organizations, local government bodies and other non-governmental organizations that are regulated by other laws.

##### **Article 2. Non-Governmental Organization**

2.1 Public organization – a voluntary, self-governed non-governmental organization that is not aimed at profits as major objective, and not distributing generated profit among its members, and that is created upon initiative of several individuals and/or legal entities having common interests, for purposes defined in charter documents of such organization.

2.2 Fund – a non-membership non-governmental organization that is founded by several individuals and/or legal entities on the basis of voluntary property shares, and is aimed at social, charitable, cultural, educational and other public activities.

2.3 A non-governmental organization may be established and operated for purposes that are not prohibited by the Constitution and laws of the Azerbaijan Republic.

2.4 A non-governmental organization may not participate in presidential, parliamentary and municipal elections of the Azerbaijan Republic, and it may not provide financial and other material assistance to political parties. Non-governmental organizations (except for non-governmental organizations that receive grants or other types of financing from foreign individuals and legal entities, as well as from Azeri legal entities with more than 30 % foreign share in their charter capital) may observe presidential, parliamentary and municipal elections in accordance with the legislation of the Azerbaijan Republic. A non-governmental

organization may come up with proposals on improvement of legal and regulatory acts, according to the rules provided by the laws of the Azerbaijan Republic and by its own charter.

### **Article 3. Name and Residence of Non-Governmental Organization**

A non-governmental organization shall have a name that points out its organizational-legal form and nature of its activities. Residence of a non-governmental organization shall be determined by address pointed in its charter. If legal address on a non-governmental organization is changed, the written notice in this regard shall be provided to relevant executive authority within not less than 7 days.

## **Section II. Organizational-Legal Forms, Types and Participants of Non-Governmental Organizations**

### **Article 4. Organizational-Legal Forms of Non-Governmental Organizations**

Non-government organizations may be established in any organizational-legal form.

### **Article 5. Types of Non-Governmental Organizations**

Non-governmental organizations may be established for fundamental reasons, or in order to achieve certain objectives.

### **Article 6. Area of Operations of Non-Governmental Organizations**

Non-governmental organizations may be established and operated with all-Azerbaijan, regional, and local status. The area of operations shall be independently determined by non-government organization. Operations of all-Azerbaijan non-governmental organizations shall apply to the whole territory of the Azerbaijan Republic. Operations of regional non-governmental organizations shall cover two or more administrative-territorial units of the Azerbaijan Republic. Local non-government organizations shall operate within one administrative-territorial unit. International non-government organizations – social communities that have area of operations covering the territory of the Azerbaijan Republic and of at least one foreign state.

### **Article 7. Branches and Representations of Non-Government Organizations**

Registered non-governmental organizations may establish branches and representations in the territory of the Azerbaijan Republic and abroad. Branch of a non-governmental organization may be established beyond the place of residence of that organization and may fully or partially carry out such organization's activities. Representation of a non-governmental organization shall be established beyond the

place of residence of that organization, and shall represent and protect the interests of such organization. Branches and representations of non-governmental organization are not legal entities. They receive share of property of an organization that established them and operate in accordance with Regulations approved on behalf of such organization. Chiefs of branches and representations shall be appointed by non-governmental organization, and shall operate within the scope of powers given to them by that non-governmental organization.

### **Article 8. Participants of Non-Governmental Organizations**

The term "participants of social communities" shall refer to their founders, members and assistants. The term "participants of foundations" shall refer to their founders and assistants. Under-age members of a public organization shall have rights and responsibilities in accordance with the civil legislation of the Azerbaijan Republic. Foreigners and stateless persons may become participants of non-governmental organizations operating in the Azerbaijan Republic.

### **Article 9. Founders of Non-Governmental Organizations**

Legal entities (except for state and local government bodies) and individuals, who reached the age of 18 (16 for founders of public youth organizations), may become founders of non-governmental organizations. Founders of non-governmental organizations shall have equal rights. The scope of their mutual rights and obligations shall be regulated by:

- foundation contract (if contract is signed) - in respect to foundation of a non-governmental organization; and
- charter - in respect to participation in operations of a non-governmental organization.

### **Article 10. Members of Social communities**

Any individual and legal entity (except for state and local government bodies) in the Azerbaijan Republic may become a member of a public organization. Members of a public organization shall have equal rights. They may:

- elect and be elected to management bodies of social communities;
- participate in operations of social communities;
- supervise operations of management bodies of social communities
- exercise other rights provided by charters of social communities.

Members of social communities shall as well follow requirements stipulated in charters of social communities. Issues of acquiring and termination of membership of a public organization shall be determined by its charter. Charter of a public

organization shall guarantee the right to lodge complaint within the organization and in court regarding termination of membership.

### **Article 11. Assistants of Non-Governmental Organizations**

The term "assistants of non-governmental organizations" shall refer to individuals and legal entities (except for state and local government bodies) that support a non-governmental organization by:

- participating in operations of such non-governmental organization; and
- providing various assistance or services to such non-governmental organization without formalizing - from organizational point of view - their own relations with that non-governmental organization.

Existence and legal status of assistants shall be determined by foundation documents of a non-governmental organization.

## **Section III. Creation, Reestablishment And Liquidation Of Non-Governmental Organizations**

### **Article 12. Creation of Non-Governmental Organizations**

A non-governmental organization may be created as a result of foundation of such organization, as well as reestablishment of existing non-governmental organization. In foundation of a non-governmental organization its creation shall be implemented by decision of a founder (founders). In this case, foundation meeting shall be summoned and charter of an organization shall be adopted.

### **Article 13. Charter of Non-Governmental Organization**

Charter of a non-governmental organization shall define:

- name and address of organization;
- objectives of operation and method of management;
- rights and responsibilities of members;
- conditions and rules for joining and leaving the membership of public organization;
- sources for formation of property of a non-governmental organization;
- rules for adoption of the charter, and for making changes and additions to it;
- rules for liquidation of a non-governmental organization, and for utilization of its property in case of liquidation.

Charter of a fund shall include information about:

- its name with the word "Fund" in it;

- address;
- objectives;
- bodies, including Custody Board, as well as rules for establishment of those bodies;
- rules for appointment and dismissal of fund officials;
- future of a fund's property in case of liquidation.

#### **Article 14. Making Changes to the Charter of Non-Governmental Organization**

Changes to the charter of a public organization may be made by decision of its supreme management body. Changes to the charter of a fund may be made by its Custody Board, and only in direction toward objectives of that fund. Custody Board of a fund may change that fund's charter only if the charter provides for possibility of changing it in such manner. If keeping the charter of a fund unchanged leads to results that have not been envisaged in advance, at the time of establishment of that fund, and if the charter does not provide for possibility of changes or has not been changed by charter empowered officials, then the right to make changes to such charter shall belong to court according to application by that fund's Custody Board.

State registration of changes to the charter of a non-governmental organization shall be registered by relevant executive authority. Changes to the charter of a non-governmental organization shall become effective from the moment they are registered.

#### **Article 15. Notice of Establishment of Public Organization**

Notice of establishment of a public organization shall be presented to relevant executive authority in a written form, not later than 30 days from the moment when decision on establishment of such public organization is adopted. On the day when the relevant executive authority receives the notice of establishment of a public organization it shall hand acknowledgment of receipt of the notice to a representative of that public organization or send it by mail.

#### **Article 16. State Registration of Non-Governmental Organization**

State registration of non-governmental organizations shall be carried out by relevant executive authority, in accordance with the legislation of the Azerbaijan Republic on registration of legal entities.

A non-governmental organization shall receive the status of legal entity only after it passes state registration.

#### **Article 17. Rejection of State Registration**

State registration of non-governmental organizations may be rejected only if:

- there is another non-governmental organization existing under the same name; or
- documents submitted for state registration contradict the Constitution, this Law, and other laws of the Azerbaijan Republic, or contain false information.

Decision on rejection of state registration of a non-governmental organization shall be submitted to a representative of that non-governmental organization in a written form, pointing out reasons for rejection, as well as provisions and paragraphs of legislation that have been violated in preparation of foundation documents.

Rejection of state registration of a non-governmental organization shall not be an obstacle for resubmission of documents for state registration after deficiencies are eliminated.

Complaint regarding decision to reject state registration of a non-governmental organization may be lodged in court.

### **Article 18. Termination of Operations of Non-Governmental Organization**

Operations of a non-governmental organization shall be terminated through reestablishment of that non-governmental organization (merger, joining, splitting, separation, transformation), or through its liquidation.

### **Article 19. Reestablishment of Non-Governmental Organization**

A non-governmental organization may be reestablished in a manner provided by this law. Reestablishment of a non-governmental organization may be carried out through decree of a body that is empowered by founders or by the charter of that non-governmental organization.

Reestablishment of a non-governmental organization may be carried out in the form of merger, joining, splitting, separation, and transformation. Reestablishment of a non-governmental organization, in case if other organization merges with or joins it, shall be counted from the moment when a relevant executive authority makes an entry in the state register about terminating operations of one of these organizations. Establishment of a non-governmental organization as a result of separation or splitting shall be counted from the moment when a relevant executive authority makes an entry in the state register of legal entities about separation of one them, or about terminating operations of organization to be split and establishment of new non-governmental organizations.

Establishment of a non-government organization by way of transformation shall be counted from the moment when a relative executive authority makes an entry in the state register of legal entities about liquidation of existing organization and

establishment of a new organization on its basis. After reestablishment of a non-governmental organization, all issues concerned with legal inheritance shall be dealt in a manner provided by the Civil Code of the Azerbaijan Republic.

#### **Article 20. Liquidation of Non-Governmental Organization**

A non-governmental organization may be liquidated in a manner provided by the legislation of the Azerbaijan Republic on registration of legal entities.

#### **Article 21. Property of Liquidated Non-Governmental Organization**

All property issues concerned with liquidation of a non-governmental organization shall be dealt in a manner provided by the Civil Code of the Azerbaijan Republic.

### **Section IV. Activities of Non-Government Organizations**

#### **Article 22. Types of Activities of Non-Governmental Organization**

A non-governmental organization may carry out any type of activity that is not prohibited by the legislation of the Azerbaijan Republic and does not contradict objectives provided in the charter of the non-governmental organization. A non-governmental organization may carry out entrepreneurship activity that is aimed only at reaching objectives of creation of that organization, without distribution of generated income among founders (members). Production and sales of profitable goods, as well as acquisition of securities and property and non-property rights, and acting as depositor with economic agents and partnerships shall be accepted as types of such activities corresponding to objectives of creation of a non-governmental organization. A non-governmental organization shall keep record of income and expenditures related with its entrepreneurship activities. Restriction per each type of activity a non-governmental organization can be engaged with shall be determined only by law.

#### **Article 23. Property of Non-Governmental Organization**

A non-governmental organization may own or run the types of property that are not prohibited by the legislation. A non-governmental organization shall be liable for its commitments with its property. This property may be alienated only in accordance with laws of the Azerbaijan Republic. Property of a fund shall comprise the property contributed by its founders (founder). A person (legal entity) that contributes property to a fund after it is established shall not gain a right of founder. Founders shall not be liable for commitments of the fund, which they created, as well as the fund shall not be liable for commitments of its founders.

#### **Article 24. Source of Forming the Property of Non-Governmental Organization**

24.0 Property of a non-governmental organization in cash and other forms shall be raised from the following sources:

- 24.0.1 regular or single-time membership fees by founders or members of social communities;
- 24.0.2 voluntary property shares and donations;
- 24.0.3 receipts from sales of goods, provision of works and services;
- 24.0.4 dividends and revenues generated from shares, bonds, other securities and savings;
- 24.0.5 income generated as a result of use or sales of its own property;
- 24.0.6 grants;
- 24.0.7 other income not prohibited by the legislation

## **Section V. Management of Non-Governmental Organizations**

### **Article 25. Principles of Management of Public Organization**

Charter of a public organization shall – in accordance with this law and other laws – define the structure and composition of that public organization, the powers of its management bodies, rules for establishment of such bodies, and their term in office, as well as the rules for adoption of decrees and acting on behalf of the public organization. Supreme management body of a public organization shall be the general meeting to be summoned not less than once a year. The general meeting shall be summoned upon initiative by executive body of a public organization, by one of its founders, or by 1/3 of its members. The main function of the general meeting is to follow objectives it is concerned with.

The following issues shall refer to the scope of powers of the general meeting:

- 25.5.1 adoption of the charter of a public organization, and making changes and additions to it;
- 25.5.2 determination of principles for formation and use of property of a public organization;
- 25.5.3 creation of executive bodies of a public organization and premature termination of their powers;
- 25.5.4 adoption of annual report;

25.5.5 participation in other organizations;

25.5.6 reestablishment and liquidation of a public organization.

Founders and members of a public organization shall receive information about place and time of the general meeting at least 2 weeks in advance. The general meeting may make changes to the charter only if more than a half of members of a public organization participate in the meeting. Decree of the general meeting shall be adopted by majority of votes of the members participating in the meeting. Each member shall have one vote. Written minutes shall be kept at the general meeting. The minutes shall be signed by chairman and secretary of the general meeting. If necessary, the minutes of the meeting shall be distributed to all members.

### **Article 26. Executive Body of Public Organization**

Executive body of a public organization may be collegial and/or single. The executive body shall exercise current management of operations of a public organization, and shall report to the supreme management body of the organization. Executive body of a public organization shall establish branches and representations of that public organization. Executive body of a public organization shall deal with all of the issues that do not refer to exclusive powers determined by this law, other laws, and charter of that public organization.

### **Article 27. Management of a Fund**

Management of a fund shall be carried out by the president of that fund or its governing board.

Custody Board is a supervisory body of a fund. The Custody Board shall:

- supervise activities of the fund;
- supervise adoption of decrees by other bodies of the fund, as well as implementation of such decrees;
- supervise utilization of the fund's means;
- adopt changes to the fund's charter;
- adopt decrees on liquidation or reestablishment of the fund.

The Custody Board shall implement its activities in accordance with public principles. Rules for establishment and operations of the Custody Board of a fund shall be determined in the charter of that fund approved by its founders.

## **Section VI. Non-Governmental Organizations and Government Bodies**

### **Article 28. Relations Between Government Bodies and Non-Governmental Organizations**

All government bodies shall protect the rights of non-governmental organizations. Non-governmental organizations shall have right to independently carry out their activities within the framework of the legislation. Government bodies may provide financial and other aid to non-governmental organizations.

#### **Article 29. Supervision of Non-Governmental Organization**

A non-government organization shall maintain accounting in accordance with the legislation.

Information about amount and structure of income of a non-governmental organization, as well as information about its property, expenses, number of staff, and salaries shall not be a state or commercial secret. Fund shall be obliged to publish annual reports about use of its property.

#### **Article 30. Tax Privileges Used by Non-Governmental Organizations**

Non-government organizations that passed state registration shall use the tax privileges provided in the Tax Code of the Azerbaijan Republic.

### **Section VII. Final Provisions**

#### **Article 31. Responsibilities of Non-Government Organization**

In case of violation of requirements arising from provisions of this law, a non-governmental organization shall bear responsibility in accordance with the legislation of the Azerbaijan Republic.

In case if taken actions contradict the objectives of this law, the relevant executive authority may warn a non-governmental organization in a written form or instruct it to eliminate the violations. A non-governmental organization shall have right to lodge complaint about such warning or instruction in court. If a non-governmental organization is given a written warning or instruction to eliminate violations for more than two times within one year, such non-governmental organization may be liquidated by court decision.

#### **Article 32. Re-registration of Previously Registered Non-Governmental Organizations**

Non-governmental organizations that passed registration before enactment of this law shall be entered into the state register of legal entities by the relevant executive authority.

#### **Article 33. Enactment of this Law**

This Law shall become effective from the day it is published.

### **ANNEX 3.**

#### **Date 10 November 2010**

**Type of Case:** Complaint related to the first instance court decision on violation of the 11th article of the Convention on Protection of Human Rights and Basic Freedoms by the Ministry of Justice. (refusal of registration of the Green Party).

**Court decision /Ruling/Resolution.** Resolution of the Yasamal District Court of the Baku city 2(004)-5696/2010 on 26<sup>th</sup> October 2010 on the first instance court decision in the case of lawsuit against the Ministry of Justice on violation of the 11 Article (Freedom of Association) by the group of founders of the Green Movement.

**Circumstance of the Case and Content of the Court Decision:** On the 16 December of 2006 the Azerbaijan Green Party convened its founding Congress and in accordance with the Azerbaijani respective legislation on the 17<sup>th</sup> of January submitted the documents for registration to the Ministry of Justice. However, the documents were returned to the applicants after 16 months by the Ministry. In its letter N.11/454 on 23 April 2008 the Ministry justified the return of documents by the inconsistencies found in the charter of the Party with the law on Political Parties. The plaintiffs made additions to the Charter suggested by the Ministry and re – submitted the documents on the 13 of May 2008. However, in spite of numerous appeals to the Ministry to receive an information on its decision by the plaintiffs, the answer was that the application was in the process of consideration. The plaintiffs sent another letter to the Ministry on the 23 July

2010. In its response on the 23 August 2010 the Ministry noted that in violation of the article 14 of the Law on Political Parties the application submitted by the Green party was not signed by all members of its governing body, and in violation of the article 4 of the Law on Political Parties of 1000 signatories required to be registered 70 did not confirm their membership in the party. On the 1 October 2010 the founders of the Green Party filed a complaint on the Violation of the Right of Association to the Yasamal District Court. By the first instance court decision 2(004) -5696/2010 on 4<sup>th</sup> of October 2010 the complaint documents were returned to the plaintiffs. The plaintiffs – Mammadov Namiq, Mammedova Tarane, Gulaliyev Mayis, Camalova Mahire and Ahmadov Araz – filed a complaint to the first instance court decision. After consideration of the complaint the Yasamal District Court by its decision on 26 October 2010 retained the ruling of the first instance court in force. The plaintiffs filed the complaint to the Court of Appeal.

#### **Annex 4.**

**Date :** 8 December 2010 (ECHR communication)

**Type of case:** Application 29441/06, *Isgandar Hamidov v. Azerbaijan*, lodged on 17 March 2006.

Relying on Article 6 of the Convention, the applicant complained about the authorities' arbitrary refusal to register his political party and the domestic courts' arbitrary decisions in this respect.

**Circumstance of the case and the court decision:** At a general assembly held on 19 December 2004 the applicant and several hundred other persons established a new political party, named National Democrat Party of Azerbaijan (*Azərbaycan Milli Demokrat Partiyası* – “AMDP”). The assembly adopted AMDP's Charter and elected its governing bodies. The applicant was elected as the party's chairman. On 17 January 2005 AMDP applied for state registration with the Ministry of Justice. The application was made in accordance with the requirements of the Law on State Registration of Legal Entities and the State Register of 12 December 2003 (“the State Registration Act”). AMDP and the applicant expected to receive a state registration certificate or a refusal to register within forty days of the date of lodging the registration request, in accordance with the procedure provided for in the State Registration Act. However, they received no reply from the Ministry of Justice within that time period. On 20 April 2005, assuming that, in the absence of a formal refusal

within the mentioned period, the party was deemed to be automatically registered under the State Registration Act, the applicant applied to the Yasamal District Court, asking the latter to confirm the party's state registration and compel the Ministry of Justice to deliver the state registration certificate. On 24 May 2005 the Yasamal District Court rejected the applicant's claim. During the hearing, the representative of the defendant, the Ministry of Justice, stated that the state registration of political parties was regulated by the Law on Political Parties of 3 June 1992 ("the Political Parties Act"), and not the State Registration Act. Therefore, the applicant's interpretation and conclusions concerning the alleged "automatic registration" of AMDP were incorrect. The defendant further noted that the Ministry of Justice was still in the process of examining the party's registration request and its compatibility with the Political Parties Act and that the applicant would be informed of the Ministry's decision in due course. The Yasamal District Court agreed with the defendant's position and concluded that the examination by the Ministry of the party's registration request was still underway and was carried out in accordance with the relevant law. On 17 June 2005 the applicant appealed, arguing that the state registration of political parties, which were considered as legal entities under domestic law, was regulated by the State Registration Act, in the same manner as the state registration of any other legal entity. He further argued that the Political Parties Act did not provide for any specific registration procedure, such as the requirements for the documents to be attached to the registration request or the time-limits for the issuance of a state registration certificate or refusal to register. He complained that, by the time of this appeal, the examination of AMDP's registration request was unlawfully delayed for five months. On 12 July 2005 the Court of Appeal rejected the applicant's appeal and upheld the Yasamal District Court's judgment, reiterating the lower court's reasoning. On 4 August 2005 the applicant lodged a cassation appeal, reiterating his complaints and arguments. On 21 October 2005 the Supreme Court upheld the lower courts' judgments. As of the latest communication with the applicant in April 2008, AMDP was not registered and the applicant claimed to have not received any formal reply from the Ministry of Justice in connection with the registration request.

**Questions to the parties:** 1. Did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? 2. Has there been an interference with the applicant's freedom of association, within the meaning of Article 11 § 1 of the Convention? If so, was that interference prescribed by law and necessary in terms of Article 11 § 2? Which specific provisions of the domestic law regulated the procedure for state registration of political parties and did this relevant domestic law meet the "quality of law"

requirements of the Convention and afford the applicant a sufficient level of protection against arbitrary interferences by the public authorities with the right to freedom of association?

### **Annex 5.**

**Date:** 13 February 1997 (Collegium of Civil Cases of Supreme Court of the Republic of Azerbaijan)

**Type of case:** The Azerbaijan Democratic Party v. Ministry of Justice of the Republic of Azerbaijan. The applicant complained that the Ministry refused to register the Charter of the Party.

**Court decision/Ruling/Resolution:** To cancel (abolish) the decision of the Collegium of the Ministry of Justice of the Republic of Azerbaijan of 21 August 1996 on refusal to register the Charter of the Azerbaijan Democratic Party as groundless.

**Circumstance of the case and the content of the court decision.:** On 30 of March of 1996 the Azerbaijan Democrat Party convened a uniting congress with the Adalat Party and adopted under a name of the new Azerbaijan Democratic Party the new Charter. However, the Collegium of the Ministry of Justice on the 21 august 1996 refused in registering the Charter of the party. The decision of the Ministry of justice was made on the basis of rejection of 205 signatures out of 1002 as non-authentic, and on the fact, that in the article 6.9 of Charter of the Party the way of adopting decisions by the Political Council was not defined, which was in violation of the article 6 of the Law on Political Parties. In addition, the article 9.2 of the Charter states, that in case of disbandment of the party its property and financial resources after assessment of its value and by the decision of the Congress is divided between the Party members. According to the Ministry of Justice this was in violation of the article 20.1 of the Law on Political Parties, as it ascribes spending the property of the Party after its disbandment only on purposes, reflected in the Charter.

The Collegium of the Supreme Court considers, that facts mentioned above cannot be taken as a basis for rejection of the Party's Charter. Because, while Azerbaijan Democratic Party submitted 1383 signatures, the Ministry of Justice checked only 1002, so 381 signatures were not checked on authenticity. Meanwhile, according to the article 4 of the Law on Political Parties the decision should be made on the fact of authenticity of 1,000 signatures. However, the Ministry of Justice based its decision on the incomplete checking procedure.

Because the Political Council, as states the article 6.1-6.6 of the Charter of the Democratic Party is only a consultative organ and according to the Article 6.3 does not make decisions on party internal activities, the provisions of the article 6 of the Law on Political Parties cannot be extended to the Political Council of the Party.

The Court considers, that the Charter provision about the disposal of the Party's property does not contradict the Article 20 of the Law on Political Parties, as the article 6 of the Law does not specify in which way the parties should dispose their property and resources in case of their disbandment.

Due to the abovementioned, the Court Collegium considers that the decision of the Collegium of Ministry of Justice to refuse registration of the Charter of the Azerbaijan Democratic Party is groundless and should be cancelled. However, since the checking the signatures procedure has not been completed, the Ministry of Justice shall register the Charter, if the number of members would be confirmed in accordance with law.

The Court ruled to satisfy partly the claim of the Azerbaijan National Democratic Party, to cancel the decision of the Collegium of the Ministry of Justice of 21 August 1996 to refuse registration of the charter of the Azerbaijan National Democratic Party, and to instruct the Ministry of Justice to complete the procedure of checking the authenticity of signatures, and if the number of party members correspondence to the law would be proved to register the Charter of the Party,

## **Annex 6.**

**Date:** 08.10.2009 (European Court of Human Rights Ref...)

**Type of case:** *Tebieti Muhafize Cemiyyeti and Israfilov v. Azerbaijan*. Application No.37083/03. The applicant complained that their association was dissolved arbitrarily by the authorities in 2003 thus violating the right of freedom of association and assembly.

**Court decision/Ruling/Resolution:** Association's unlawful action had not been proven and the domestic courts' decision to dissolve it had been arbitrary, in violation of Article 11. Under Article 41 (just satisfaction) of the Convention, the Court awarded the first applicant 8,000 Euros (EUR) in respect of non-pecuniary damage and EUR 1,150 for costs and expenses.

**Circumstance of the case and content of the court decision:** The applicants are a non-profit non-governmental organisation, and an Azerbaijani national. The organisation is an association registered in Baku which was active in the environmental field between 1995 and 2002. Mr. Israfilov, the organisation's former Chairman, was born in 1948 and lives in Baku. The Association was registered by the Ministry of Justice ("the Ministry") in August 1995. About two years later, it received a letter from the Ministry stating that it had committed certain breaches of domestic law and its own charter. In August 2002, the Ministry started an inspection into the Association's activities, which culminated in three warnings it issued between September and October 2002. The warnings concerned the Association's failure to hold annual general assemblies as required by law and its attempts to carry out unlawful environmental inspections into State and private commercial companies and to collect membership fees from those. Upon an application by the Ministry the domestic court ordered the Association's dissolution in March 2003. Following its unsuccessful appeals the Association was dissolved. Relying on Article 11 (freedom of association and assembly), the applicants complained that their association was dissolved arbitrarily by the authorities in 2003. The Court noted that the Association had not called a general assembly for around seven years, neither had it brought its own charter into conformity with domestic legislation as regards the frequency of convening general assemblies. Consequently, the Court found that the Azeri authorities, by issuing the first initial warning, had reacted correctly vis-à-vis the Association in order to ensure its compliance with the domestic law. The Ministry had issued, in a very short period of time, two additional warnings to the Association despite being informed that a general assembly had been held in August 2002. The warnings had only given the Association a ten-day deadline to remedy the situation. Given that organising a general assembly required at least two

weeks according to domestic law, the ten-day deadline had been insufficient to eliminate the said breaches of the law. The Court further noted that the immediate outright dissolution of an association had been the only available sanction under domestic law for any type of an association's misconduct. This was, however, a disproportionate measure in situations, like the present one, of mere failure to comply with certain internal management rules. Consequently less strict measures had to be considered by the authorities. The content of the accusations against the Association had subsequently changed when it had been accused of attempting to collect money in the guise of membership fees. These allegations had been extremely vague, briefly worded and offered no detail of the purported illegal activities. While, if proven, they would have entailed criminal responsibility for the Association's managers, no criminal proceedings had ever been instituted. Further, no evidence had ever been adduced as to when or where the alleged unlawful activities had taken place or who exactly had been involved. Finally, when deciding on all allegations in respect of the Association, the domestic courts had accepted the findings of the officials of the Ministry of Justice at their face value without an independent judicial inquiry.

## **Annex 7.**

**Date** 08.04.2010 (European Court of Human Rights, Ref.292a10).

**Type of case:** *Namat Aliyev v. Azerbaijan (application n.18705/06)* Right to free elections breached by the authorities of Azerbaijan. Violation of article 3 of protocol No.1 (right to free elections) to the European Convention of Human Rights. Applicant complained that, in the electoral constituency where he stood as a candidate in the parliamentary elections, there had been a number of serious irregularities and breaches of electoral law which had made it impossible to determine the true opinion of voters and thus had infringed his right to stand as a candidate in free elections. He also alleged that the domestic authorities, including the electoral commissions and courts, had failed to duly examine his complaints and to investigate his allegations concerning the mentioned irregularities.

**Court decision/Ruling/Resolution:** The Court concluded that the conduct of the electoral commissions and courts and their respective decisions had revealed a lack of any genuine concern for the protection of the applicant's right to stand for election. There has accordingly been a violation of Article 3 of Protocol No. 1 to the Convention. Under Article 41 (just satisfaction), the Court held that Azerbaijan had

to pay to the applicant 7,500 euros (EUR) for non-pecuniary damage and EUR 1,600 in respect of costs and expenses.

**Circumstance of the case and content of the court decision:** The applicant, Namat Faiz oglu Aliyev, stood for the elections to the Milli Mejlis (Parliament) of 6 November 2005 as a candidate of the opposition bloc Azadliq. He was registered as a candidate for the single-mandate electoral constituency no. 93. According to the Constituency Electoral Commission (“the ConEC”) protocol drawn up after election day, one of the applicant’s opponents, Z.O., a member of the Motherland Party, obtained the highest number of votes cast in constituency no. 93. Specifically, according to the ConEC protocol, Z.O. received 41.25%, the applicant received 14.19%, and a third candidate received 12.92%. On 7 and 8 November 2005 the applicant submitted complaints before the ConEC and the Central Electoral Commission (“CEC”) concerning alleged irregularities during the election day. He alleged in particular unlawful interference in the election process by local executive authorities, undue influence on voter choice, several instances of ballot-box stuffing, harassment of observers, irregularities in electoral rolls and obvious discrepancies in electoral protocols showing a possible failure to account for as many as thousands of “unused” blank ballots. In support of his claims, the applicant submitted to the CEC originals of more than 30 affidavits (*akt*) of election observers, audio tapes and other evidence documenting specific instances of irregularities. On 23 November 2005 the ConEC rejected the applicant’s complaint as unsubstantiated without further elaboration. On the same day, the ConEC issued its final protocol approving the overall election results in the country. On 25 November 2005 the applicant applied before the Court of Appeal, asking it to invalidate the CEC’s final protocol in the part relating to the election results in his electoral constituency. He claimed that due to the irregularities occurred on election day, it was not possible to determine the true opinion of the voters in his constituency. The Court of Appeal dismissed his claims as unsubstantiated. It did not consider the photocopies of the affidavits as admissible evidence, noting that in accordance with domestic law either the originals or notarised copies of those affidavits should have been submitted.

On 30 November 2005 the applicant lodged a further appeal with the Supreme Court, reiterating his claims. He also noted that he had submitted the originals of the documentary evidence to the CEC on 7 November 2005. The Supreme Court dismissed his appeal on the same grounds as the Court of Appeal. As to the originals of the documentary evidence allegedly submitted to the CEC, the Supreme Court noted that the applicant had failed to submit any evidence proving that he had ever complained before the CEC.

On the same day, 1 December 2005, the Constitutional Court confirmed the election results in the majority of the electoral constituencies, including Barda City Electoral Constituency no. 93. Relying in particular on Article 3 of Protocol No. 1 to the

Convention, the applicant complained that, in the electoral constituency where he stood as a candidate in the parliamentary elections, there had been a number of serious irregularities and breaches of electoral law which had made it impossible to determine the true opinion of voters and thus had infringed his right to stand as a candidate in free elections. He also alleged that the domestic authorities, including the electoral commissions and courts, had failed to duly examine his complaints and to investigate his allegations concerning the mentioned irregularities. The application was lodged with the European Court of Human Rights on 20 April 2006. The Court noted that what was at stake in the present case was not the applicant's right to win the election in his constituency, but his right to stand freely and effectively for it. The applicant was entitled under Article 3 of Protocol No. 1 to stand for election in fair and democratic conditions, regardless of whether he ultimately won or lost. The Court acknowledged the seriousness of the claims made by the applicant before the domestic authorities. The alleged irregularities, if duly confirmed to have taken place, had been indeed potentially capable of thwarting the democratic nature of the elections. The applicant had presented relevant evidence consisting mainly of affidavits signed by official observers giving fact-specific accounts of the events as witnessed by them. In addition, the Final Report of the OSCE/ODIHR Election Observation Mission concerning the elections of 6 November 2005 had indirectly corroborated the applicant's claims.

**Annex 8.** Date 30.09.2010 (European Court of Human Rights Ref.708a10)

**Type of case:** *Kerimova v. Azerbaijan* (application.20799/06) Arbitrary Invalidation of the Election Results. Chamber judgement, A Violation of Article 3 of Protocol N.1 (right to free elections) to the European Convention of Human Rights. Applicant complained that that the invalidation of the election results in her constituency had been arbitrary and unlawful and had infringed her electoral rights as the winner of the election.

**Court decision/Ruling/Resolution:** The invalidation decision had arbitrarily infringed Ms Kerimova's electoral rights by depriving her of the benefit of being elected to Parliament; it had also shown lack of concern for the integrity of the electoral process, which could not be considered compatible with the spirit of the right to free elections under the Convention. There had, therefore, been a violation of Article 3 of Protocol No. 1. Under Article 41 (just satisfaction) of the Convention, the Court held that Azerbaijan was to pay Ms Kerimova 50,000 euros (EUR) in respect of pecuniary damage, EUR 7,500 in respect of non-pecuniary damage and EUR 1,600 in respect of costs and expenses.

**Circumstance of the case and content of the court decision:** The applicant, Flora Alakbar Gizi Kerimova, stood as a candidate for the opposition bloc Azadliq in the November 2005 elections to Parliament (Milli Mejlis). The copies of the results she obtained from the local electoral commission at the end of the election day showed that she had received the largest number of votes in her constituency. In particular, she had obtained 5,566 votes as compared to the 3,922 votes cast in respect of a candidate from the ruling political party who came second. Following the official tabulation of the results the next day, Ms Kerimova featured in the electoral protocol as "the elected candidate". On 8 November 2005, the Central Election Commission invalidated the election results in Ms Kerimova's constituency as it found that the protocols had been tampered with to the effect that it was impossible to determine the will of the voters. Ms Kerimova appealed, arguing that the changes in the protocols had in effect reduced the number of votes recorded in her favour and had increased those cast in favour of the candidate immediately after her. She pointed out that she remained the winner despite the falsifications to her disadvantage. Her appeals were unsuccessful. In the meantime, two election officials were criminally convicted for having falsified the election results in Ms Kerimova's constituency, to the benefit of candidates other than herself. The application was lodged with the European Court of Human Rights on 23 May 2006. The Court noted that it had been sufficiently clear that, according to the election results both before and after the irregularities, Ms Kerimova had been the winner of the elections. Despite that, in their decision to invalidate the results, the election authorities had not given reasons as to why they found that the alterations obscured the outcome of the elections. Neither had the authorities even considered the possibility of recounting the votes once the irregularities had been established.

Consequently, the decision to invalidate the election had been unsubstantiated and arbitrary. The Court further noted that the relevant national law applicable at the time, the Electoral Code, had prohibited the invalidation of election results at any level on the basis of a finding of irregularities committed for the benefit of candidates who lost the election. Irrespective of that rule, which protected the opinion and free will of the people who voted and aimed at preventing the wrongful punishing of a winning candidate, the domestic courts had simply reiterated the election commission's findings. As a result, the authorities' inadequate approach had brought about a situation where the election process in the entire electoral constituency had been single-handedly sabotaged by two electoral officials who had abused their position by making changes to a number of election protocols. By arbitrarily invalidating the election results because of those officials' actions, the national authorities had essentially helped them to obstruct the election. While the two officials had not succeeded in influencing the ultimate outcome of the elections, the invalidation decision itself had had that effect.

#### **Annex 9 Selected emblems of Political Parties of the Republic of Azerbaijan.**

