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Political Party/Campaign Finances and Use of Administrative Resources in Azerbaijan ¹

Country Report

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¹ Disclaimer: The views and opinions expressed in this report are those of the author and do not necessarily reflect the official policy or position of SAOG, Council of Europe, International IDEA, IFES, NIMD, OSCE-ODIHR, TI Georgia.

ABSTRACT

This report examines Azerbaijan's legislation on political party and election funding and its implementation against guidelines and recommendations of the Venice Commission and Group of States against Corruption (GRECO) of the Council of Europe, as well as the Office for Democratic Institute and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR), International IDEA. Azerbaijan's legislation on political party and campaign financing, use of administrative resources are largely in line with international standards with some exceptions. Engagement with the Council of Europe, GRECO and the OSCE/ODIHR has partially aided to this compliance. However, in practice political parties do not have equal and sufficient access to financing due to range of restrictions and lack of pluralistic political system.

BACKGROUND

This report examines Azerbaijan's legislation on political party/campaign finance and use of administrative resources, its implementation against guidelines and recommendations of the Venice Commission and Group of States against Corruption (GRECO) of the Council of Europe, as well as the Office for Democratic Institute and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR). These guidelines and recommendations are referred as international standards in the rest of the paper.

Azerbaijan gained its independence following the collapse of Soviet Union in October 1991 and joined the Organization for Security and Cooperation in Europe (OSCE²) few months later undertaking commitments on democracy and human rights. The country became a member of the Council of Europe in 2001 and ratified the European Convention on Human Rights a year later committing to further international obligations with regards to the rule of law and democracy.

Azerbaijan has a presidential system with large powers bestowed upon the executive branch. Currently, 55 political parties are registered in Azerbaijan, but very few of them play any role in the political life of the country of 9.7 million. The ruling New Azerbaijani Party (YAP) dominates the political landscape and controls 71 of 125 seats of the single-chamber parliament. YAP has offices across the country and reported 7.8 million manat (\$5 million) annual budget in 2016.

Non-partisan members of parliament (MPs) – often referred as independents – make up the second largest group with 42 seats, while the remaining 12 seats are divided among 11 opposition parties. Opposition parties remain fragmented and marginalized. Popular Front Party (PFP) and Musavat – two largest opposition parties – are not represented in the parliament.

The country's human rights records and democratic credentials have not been a straightforward success. The Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE, which has observed all presidential and parliamentary elections held in Azerbaijan since 1995 with the exception of the last 2015 Parliamentary Elections, has noted in all of its findings that the country had fallen short of international standards of free and fair elections. The ODIHR decided to cancel its mission in 2015 after Azerbaijani government imposed restrictions on number of observers.

The situation of human rights has deteriorated further since 2013. Restrictions introduced to the NGO and grant legislation made accessing funding impossible for independent civil society. The Human Rights Watch states that "the space for independent activism, critical journalism, and opposition political activity has been virtually extinguished by the arrests and convictions of many activists, human rights defenders, and journalists, as well as by laws and regulations restricting the activities of independent groups and their ability to secure funding".

² Then Conference on Security and Cooperation in Europe

LEGISLATION AND POLICY ANALYSIS

Political party and campaign financing in Azerbaijan are mainly regulated by the Election Code (2003) and Law on Political Parties (1992). This part of the report analyses funding of political parties and campaign finance of parties and candidates during election campaign.

A. Political party funding

Public funding of political parties

International standards recommend public funding for promoting equal participation of political parties and ensuring their independence from influence of donors. Azerbaijan introduced financial support to political parties from the state budget with the 20 April 2012 amendments to the Law on Political Parties (Art.17). The amendments stipulate postelection calculation mechanism for the basis of distribution of financial support. The state allocates 2.5 million manats (\$1.5 million) every year to political parties divided among according to the following conditions:

- 40% of the funds are equally divided among political parties represented in the Parliament;
- 50% is divided among political parties represented in the parliament proportionally to the number of elected deputies;
- 10% is allocated to political parties that are not represented in the parliament, but whose nominated candidates succeeded to gain at least 3% of total valid votes in the last parliamentary election. The amount is divided proportionally to the percentage of gained votes.
- In case political parties participate in election in blocs, the amount is divided among individual political parties.

If a political party refuses to accept the funds allocated from the state budget, those funds shall be returned to the state budget. The law does not stipulate any requirements regarding directions or purpose of the funds.

International standards require public funding of political parties to be reasonable and non-discriminatory. Although, the Azerbaijani legislation is largely in line with guidelines of the Venice Commission, in reality the law fails to ensure the non-discrimination principle in Azerbaijan due to shortcomings related to the elections. The OSCE/ODIHR election observation mission concluded that "the conduct of [2010 Parliamentary] elections overall was not sufficient to constitute meaningful progress in the democratic development of the country." None of the political parties participating in elections was able to collect 3% of casted votes leaving the 10% of funding from the state budget unallocated.

Private funding of political parties

Article 19 of the Law on Political Parties stipulates conditions for monetary and in-kind donations to political parties. According to the law, all monetary donations should be transferred to political party's bank account, while the financial cost of an in-kind donation should be calculated based on market value. Amounts and names of sources of all donations should be reflected in the annual financial report of political parties submitted to the CEC. The legislation specifies restrictions on donations in order to minimize possible corruption and buying of political influence. The legislation caps the maximum amount of donation by one person at 10,000 manats (\$5,900) per a year which could be donated to one or several parties combined.

Moreover underage citizens or individuals who fail to indicate their personal details (name, date of birth, ID serial number etc.) are barred from donating to political parties.

The law also prohibits donation from **legal entities**, public associations and foundations, foreign states, foreign legal entities and foreign individuals, and persons without citizenship. State bodies and state entities

(except from the above-mentioned annual financing from budget), municipal authorities and their subordinate entities, military units and religious entities are also prohibited from donating.

The law allows political parties to have following revenues and expenditures:

Sources of revenues	Expenditures
<ul style="list-style-type: none"> – Membership fees – Proceed from donations – Proceeds from the arrangements, circulation of press outlets and articles, and other similar profitable activity – Proceed from property – Payments of the lower organizations – Resources received in the form of payment of the expenditures for the election campaign – Funds allocated from the state budget – Funds earned from debts and loans – Property obtained through succession or inheritance – Other proceeds 	<ul style="list-style-type: none"> – Funds spent on current activities – Payments to the lower organizations – Expenditures incurred for maintenance and informational support of political parties – Loan interests – Individual expenditures – Other expenditures

The LPP does not regulate membership fees and leaves to internal charters of political parties. A party could set the membership fee at any amount. The law also does not explain what are included in the other proceeds and the other expenditures categories.

Political parties are not allowed to own land, industrial enterprises, production unions or cooperatives and may not engaged in business or commercial activity. Political parties may use the premises and other property in accordance with the contracts on debt or lease concluded with other persons.

The LPP corresponds to international standards which call for restricting anonymous donations in order to avoid corruption. However, political environment in the country discourages citizens from openly supporting any political party through donations. In practice, the restriction of anonymous donation combined with public perception of negative consequence associated with supporting opposition parties translate into practice in the form of illegal hand to hand donations or donations through a third person.

In the light of the poor donation culture, prohibition of contributions by legal entities and restrictions regarding individual contributions make the financial situation of political parties which do not receive funding from the state budget very difficult. None of the 44 political parties which published their 2016 financial reports indicated any receipt of donation last year.

Reporting requirements

Financing procedures of political parties should be governed by the principles of transparency and accountability. Azerbaijan's legislation requires political parties to report on their finances to the CEC once a year – in line with guidelines of the Venice Commission – no later than April 1 of the preceding year. The reports must be accompanied with an opinion of independent audit. As a supervisory body the CEC can ask for additional information and documents and should publish these reports on its website on the following day.

Political parties are required to report using a special form which includes questions about membership fees, donations, loans, revenues from real estate and etc. Azerbaijan's legislation complies with international

standards, however, when it comes to implementation, the CEC does not have an adequate mechanisms or capacity to regulate and to investigate the reports properly. This is at odds with the Venice Commission's guidelines which specify that states should empower relevant authorities to control and if need be to sanctions political parties which fall short of regulatory requirements.

Out of 55 registered political parties, 44 indicated 0 donations in their 2016 financial report, while 11 have not submitted the reports at all.

B. Campaign financing

Public funding

Public funding for elections include contribution provided by state in the form of direct monetary allocated from budget or indirect support such as free air time, venues, subsidized transportation for campaign activities or forms of tax relief. Campaign financing in Azerbaijan is regulated by the Election Code. In a departure from international standards, Azerbaijan abolished public financing for election campaign on 22 June 2010 few months before the parliamentary elections. The decision was adopted without any public discussions involving civil society or political parties, as well as without consulting the Venice Commission and the ODIHR and has had negative impact on political participation in the light of very poorly resourced opposition parties.

Current legislation stipulates indirect public support through allocation of free airtime on public television, reimbursement of transport expenses related to campaign, reimbursement of salary of candidate, and immunity from criminal liability for registered candidates during the campaign period.

However, candidates and political parties have to meet difficult conditions in order to be eligible for such support. For example, in order to qualify for the free airtime on public TV – one of the most important state support for election participants –, a political party or a bloc of parties should register at least 60 candidates (out of 125 seats) in 60 single –mandate constituencies. No political party or bloc, with the exception of the ruling YAP party, has been able to register 60 candidates since 2005.

In reality, independent candidates do not have access to free air time. A registered candidate is entitled to have access to the public television and radio companies broadcasted in less than half of the territory of the country, but Azerbaijan does not have such a public television or radio due to its small size. These conditions effectively prevent candidates and political parties and blocs with less than 60 registered candidates from accessing free airtime.

The CEC is required to reimburse transport expenses occurred within the area of the constituency of registered candidate with exception of taxi. Also state bodies and municipalities should provide free suitable venues (buildings, rooms) to registered candidates and political parties for meetings with voters. The owner should offer same venue with same conditions to all candidates or political parties. However in practice, opposition representatives informed the ODIHR's mission³ that "they often face difficulties in obtaining authorization for public meetings and, when approved, that they are often confined to venues that are not easily accessible." Candidates are also entitled to unpaid vacation from their employees and should be reimbursed in an amount of official average salary by the election bodies during the period of elections.

Private funding

Azerbaijan's legislation mainly is in line with international standards with regards to the private contributions to election campaign financing. The legislation stipulates the creation of election fund by a political party, a bloc of parties, a campaign group or an individual candidate. Financing of elections are carried out via the election funds. The election fund consists of financial and in-kind donations and special

³ ODIHR, Azerbaijan, Parliamentary Elections, 1 November 2015: Needs Assessment Mission Report

funds of own resources of candidates, political parties, groups of political parties or referendum campaign groups. Political parties and blocs of political parties that have nominated or registered candidates in more than 60 single-mandates could create a unified election fund.

The legislation limits the maximum amount of an election fund for various elections/referendum and stipulates additional restrictions listed below (in manat):

Election fund	Referendum	Parliament	Presidential
Special funds (own resources of a candidate, a political party or a referendum campaign)	50,000	500,000	250,000
Citizens' donation (per person)	1,000	3,000	3,000
Legal entity's donation (per entity)	10,000	50,000	50,000
Maximum amount of election fund	50,000	500,000	10,000,000

The Election Code prohibits donations from following sources:

- foreign countries and foreign legal entities, foreign citizens, stateless persons;
- citizens under the age of 18;
- international organizations and international social movements;
- state bodies and municipalities, state and municipal organizations and offices;
- military units;
- charitable organizations, religious associations, institutions and organizations;
- anonymous donors:

A legal entity with more than 30% of its charter capital owned by a state or state body, or a foreign entity, foreign individual or a stateless person cannot contribute to the election campaign either. Moreover, if a legal entity is not able to show amount of shares owned by state or municipality or amount of foreign shares in its charter capital, it is considered as an anonymous donor.

Anonymous donations must be transferred to the state budget by candidates within 10 days of receipt of such donations, while donations from groups that do not have the right to contribute to election campaign should be returned to the donor within 10 days of receipt, deducting the transfer expenses and indicating the reasons for return. If the donated amount exceeds the legally permitted limit, the part which exceeds the limit should be returned to the donor under the same conditions.

The legislation also stipulates restrictions on in-kind contributions by **legal entities** which are prohibited to provide free of charge or below market price services to candidates. This restriction does not apply to individual in-kind contributors.

Regulation of expenditures

Individuals can make the monetary contributions via post offices or bank/credit organizations, while legal entities are required to use bank transfers to election fund. The requirement of bank transfers is aimed at increasing transparency and providing opportunity for the regulator to monitor the election funds.

All unspent donations remaining in election funds should be returned to contributors proportionally or should be transferred to the state or municipal budgets.

Paid advertisement is regulated by the law which requires all public and private television and radio companies to provide equal opportunity and conditions for all candidates and political parties.

The election funds can be spent only for their intended purposes which are limited to three categories by the Election Code:

- To finance organizational-technical actions for the collection of signatures in support of the nomination of candidates or approval of referendum campaign group members, as well as to pay the relevant persons for collecting voters' signatures;
- To pay for election campaign expenses and information and consulting services;
- To cover other expenses for work performed directly by legal entities and individuals during the election campaign.

Reporting

Election fund should be open in a determined by the CEC and election participants should use this dedicated bank account for all operations (contributions and expenditures) related to election campaign. Registered candidates, political parties, blocs of political parties are obliged to register and report to the CEC – the main supervisory body regulating the reporting of campaign financing – on all operations. The CEC is coordinating with the financial regulator – Financial Markets Supervisory Authority. Candidates, political parties or blocs are required to provide three reports during the election:

- the first report should be submitted during the registration process along with the required documents for registration. This report should contain information for the period of two days prior to the date indicated in the report;
- the second report should be submitted between 10 to 20 days prior to the Election Day and should contain information for the period of seven days prior to the date of reporting;
- the third and final report should be submitted at latest 10 days after final results of elections (referendum) are officially published. The initial financial documents on the collection and expenditure of election funds should be attached to the final financial report.

The relevant banks should submit separate reports on election funds to the CEC at least once a week during the election period.

Taking into account very short period of election campaign, such complicated and demanding reporting schedule make the process difficult for political parties and candidates.

The Election Code stipulates the CEC to make the financial reports of candidates, political parties and blocs available for public within five days of reporting. The CEC should provide information to media about financing of the candidates and political parties at least once every two weeks. In compliance with international standards, sources of all donations larger than certain threshold should be open to public.

Also the relevant executive authorities should submit information about legal entities that donated to election funds. Furthermore, records of the cost and volume of print-space and airtime allocated to candidates and parties should be also provided to the election commission by the TV and radio companies.

However, in practice, the financial reports are not published by the CEC in a violation of requirement of the legislation.

C. Abuse of administrative resources

The Election Code stipulates equal opportunities for candidates during their nomination and specifies any activities of state or municipal officials supporting one's nomination, signature collection, and election campaigning during their working hours as "an abuse of one's position or occupation to gain advantage." Using buildings of state bodies and municipalities (unless all candidates have equal access to them), their transportation and communications, along with public media outlets is also considered an abuse of administrative resources.

The legislation entails harsh sanctions for abuse of administrative resources. Abuse of official powers and administrative resources with intention of influencing the results of elections is considered a crime punishable by 8 years of imprisonment.

However, the implementation of the legislation falls short of international standards. Authorities have not addressed concerns and recommendations of both international observers like the ODIHR and domestic monitoring groups. During 2010 Parliamentary Elections, the ODIHR reported "misuse of administrative resources as well as interference by local authorities in favour of candidates from the ruling party created an uneven playing field for candidates."⁴ Employees of state institutions and organizations funded from the budget were involved in signature collection and election campaigning activities. International observers noted similar violations during the 2013 Presidential Elections⁵. Domestic observation groups also point at abuse of administrative resources during collecting signature for registration of candidates or political parties.⁶

None of the reports have been investigated and none of officials have been prosecuted.

FINDINGS

Azerbaijan's legislation on political party and election financing is largely in line with international standards with some exceptions. Engagement with the Council of Europe, GRECO and the OSCE/ODIHR has partially aided to this compliance.

The legislation does not adequately regulate membership fees leaving it to discretion of political parties. This is at odds with the guidelines of the OSCE/ODIHR which states that "legislation should ensure that membership fees are not used to circumvent contribution limits. This can be accomplished by treating membership fees as contributions".

There are no clear rules and mechanisms to monitor and control in-kind contributions. Annual financial reports of political parties are very general and does not allow for thorough examination either by the supervisory authority CEC or by civil society. None of the registered political parties indicated any in-kind contribution in their financial reports.

The CEC does not have an adequate capacity or resources to monitor and investigate in-kind contributions. The CEC has not asserted itself as proactive supervisor and its publications have limited visibility in media.

⁴ OSCE/ODIHR, Republic of Azerbaijan, Parliamentary Elections, 7 November 2010, Election Observation Mission Final Report

⁵ International Election Observation Mission, Republic of Azerbaijan, Presidential Election, 9 October 2013, Statement of Preliminary Findings and Conclusions

⁶ Election Monitoring and Democracy studies center, Final reports

The legislation stipulates weak sanctions regime, but the CEC has chosen to stay away from applying any sanctions.

Moreover, the political identity of members of the CEC increases the partisanship during the investigations of reports. Azerbaijan has failed to address the recommendation of the OSCE/ODIHR related to the formula of composition of the election commissions. The ODIHR states that the current formula "gives pro-government forces a de facto decision-making majority in them."

Unlike in other countries of the region, civil society organizations and media are not able to support the CEC acting as watchdogs particularly with regards to monitoring in-kind contributions and election campaign financing due to restrictive legislation and environment. Non-governmental organizations (NGOs) and civic groups do not have access to funding and are not able to operate freely due to amendments to the legislation on NGOs and grants. As stated by the ODIHR, detentions, intimidations, physical attacks and imprisonment of journalists negatively affect the media environment. Recent ban of five news websites further added to the negative trend.

Candidates and political parties do not have sufficient access to financing. The formula of division of public funding favours the ruling party, while smaller parties receive limited or no funding. This increases the financial gap between parties. According to the report, ruling party's revenues in 2016 was 7 times of total revenues of all other parties. Funding from the state budget constitute to all or majority of revenues of political parties. 30 out of 55 registered parties reported 0 revenues in 2016, while 10 has not submitted their reports. Only four parties that are not represented in the parliament and therefore not recipients of funding from the state budget reported some revenues, albeit very in a very limited amount. The total revenue of these four parties was around 10,000 manat (\$6,000).

In-kind public support such as free airtime on public television and radio comes with stringent conditions which allows for excluding opposition parties from benefiting the support. Only the ruling party has succeeded to qualify for the free airtime since 2005. Elimination of public funding for the election campaign has had further negative impact on situation of political parties ultimately hindering political participation.

The CEC has been consistent in publishing financial reports of political parties, but has failed to do the same with regard to the reports related to the election campaigns. This is at odds with national legislation and international standards.

Abuse of administrative resources, particularly during elections, remains a significant problem in Azerbaijan. Although, the country's legislation explicitly bans the involvement of state and municipal officials in electoral process in favour of any candidate and entails criminal liability for abuse of power, the enforcement of the legislation remains short of the international standards. Authorities have not put forth adequate efforts to address concerns and recommendations of the ODIHR. Despite evidences and reports of such cases, particularly using employees of budget funded organizations (like schools and hospitals), authorities have not carried out proper investigation.

RECOMMENDATIONS

The report presents following recommendations to Azerbaijani authorities in order to improve the legislation and practice with regards to political party and election financing:

- Ensure level-playing field for all political parties and forces guaranteeing competitive and non-discriminatory environment during and between the elections;
- Create necessary conditions for civil society and media to operate freely and independently allowing it to fulfil its duties as watchdog over political party and election campaign financing.
- Take necessary measures in order to enhance independence of the monitoring authority – the CEC – and to promote more pro-active approach to monitoring and investigation;
- Address recommendations of the ODIHR on composition of election commissions including the composition of the Central Election Commission and ensure more equitable division of seats;
- Restore opportunity for financing of election campaign from the state budget;
- Introduce regulation of membership fees for political parties and develop concrete mechanisms on monitoring of in-kind contributions in line with recommendations of the Venice Commission and the OSCE/ODIHR;
- Ensure the financial reports on election funds are published and accessible for public in timely manner;
- Establish an online reporting system on the CEC's website (or any other platform) where standardized form could be used by all parties and candidates, and where additional documents such as receipts and invoices can be uploaded for further scrutiny;
- Investigate reports and allegations of abuse of administrative resources during election campaigns and hold persons responsible for violation of the law liable;
- Enforce the legislation on abuse of administrative resources and ensure equal opportunities for all candidates and political parties.

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