



DOCUMENT ON IMPROVEMENT OF NATIONAL LEGISLATION AND PRACTICE ON ENSURING OPPORTUNITIES FOR POLITICAL ACTIVITIES IN AZERBAIJAN

Election Monitoring and Democracy Studies Center

**DOCUMENT ON IMPROVEMENT
OF NATIONAL LEGISLATION AND
PRACTICE ON ENSURING
OPPORTUNITIES FOR POLITICAL
ACTIVITIES IN AZERBAIJAN**

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I. SUMMARY

Taking into account the importance of participation of Azerbaijan in the Eastern Partnership Program of European Union for ensuring political freedoms in the country, Election Monitoring and Democracy Studies Centre (EMDS) conducted series of activities to contribute to this process. One of such activities was “Monitoring of Ensuring the Political Participation in Azerbaijan” project which also included comparative analysis of legislation of European Eastern Partnership (EEP) countries on the right to freedom of assembly and association. EMDS attempted to use the progressive legal practices from legislation of these countries for improvement of national legislation of Azerbaijan.

Within the framework of the abovementioned project, **“Document on Improvement of National Legislation and Practice on Ensuring Opportunities for Political Activities in Azerbaijan”** was designed based on results of information requests sent to local executive authorities and opinion survey conducted among political activists by EMDS during 2012. Moreover, proposals of additions and amendments to the “Law on the Freedom of Assembly” and “Law on Political Parties” are also attached to this document.

Improvement document includes EMDS’s efforts and activities on learning accountability of local executive authorities on ensuring freedom of assembly and assessing situation of implementation of laws in this regard. For example, the organization sent information requests to 56 local executive powers to find out list of indoor and outdoor venues for holding peaceful as-

semblies in regions. The reactions of local executive powers to these requests allow us to assess the situation of citizen's right to freedom of assembly in the country.

The opinion survey conducted by the organization among 272 persons representing socio-political organizations and political parties was aimed at evaluating opportunities and capacities for political participation. Citizens affiliated with various non-governmental organizations participated in the survey responding on questions on decision making process in their organizations, ensuring freedom of assembly during local level events, using social media and internet for socio-political purposes and etc. The survey tells important story since it covers diverse group of 272 respondents including both independent and party members, activists living in capital and regions.

Another chapter of the document is about draft law proposals designed by EMDS for improving the "Law on the Freedom of Assembly" and the "Law on Political Parties". The draft law proposals include additions and amendments to the abovementioned laws based on guiding principles of the Venice Commission of the Council of Europe and the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE. The organization also utilized from more progressive legislation of Georgia, Ukraine and Moldova while developing the draft laws. Both draft laws recommend elimination of restrictive stipulations and introducing liberal and progressive provisions to regulate functioning of political parties and to ensure freedom of assembly.

EMDS studied opportunities for political participation both investigating the legal framework and existing practice in the

country. Findings of the organization conclude that violation of freedom of association and freedom of assembly are the main obstacles to democratization of the political system and development of political institutions in Azerbaijan. This causes dramatic decline of contribution of citizens, public organizations and political entities to democratization process during and period between elections, and makes political processes inaccessible and tedious event.

EMDS conducted comparative assessment of opportunities for political participation in number of member states of the Council of Europe, particularly in European Eastern Partnership countries and strongly believes that improvement of legislation and practice of participation in political processes are required. Improvement of the "Law on Freedom of Assembly" and "Law on Political Parties" in accordance with guidelines of the Venice Commission of the Council of Europe and based on recommendations of domestic organizations should be carried out.

Taking into account desires and political opinions on improvement of opportunities for political participation, EMDS strongly believes that the Parliament and central executive authorities of the Republic of Azerbaijan should undertake relevant reforms and the government should demonstrate political will in this regard.

EMDS urges central and local executive authorities to behave in more accountable and responsible manner with regard to ensuring functioning of socio-political organizations during elections and period between elections, as well as to guaranteeing citizens' right to freedom of assembly.

II. OPPORTUNITIES FOR POLITICAL PARTICIPATION

a) Legal Framework

During 20 years after the Republic of Azerbaijan gained its independence, number of reforms on legal framework regulating protection of human rights and freedoms were adopted and amendments to the Constitution and normative legal acts were made. Furthermore, after the admission of Azerbaijan to the Council of Europe in 2001, new laws regulating political freedoms were adopted while additions and amendments to other legal acts were approved. In the meantime, the legislation of the Republic of Azerbaijan – the Constitution, the Election Code, “the Law on Freedom of Assembly”, “the Law on NGOs”, “the Law on Political Parties”, “the Law on Labour Unions” and other normative acts regulate citizens’ right to participate in socio-political life of the country.

It is noteworthy that legal restrictions to participation of political parties in socio-political processes are one of the most important obstacles to political freedoms. Therefore, among abovementioned normative legal acts “the Law on Political Parties” and “the Law on Freedom of Assembly” are most central to ensuring political freedoms. It should be noted that additions and amendments were made to both laws several times. However, despite recommendations of the Venice Commission of the Council of Europe, restrictions imposed by the laws were not eliminated.

According to the “Law on Political Parties” adopted on 3 June 1993, membership of at least 1,000 citizens of the Republic of Azerbaijan is required for establishing a political party. In Azerbaijan, political parties are registered at the Ministry of Justice as other non-commercial legal entities in accordance with the “law on State Registration of Legal Persons and State Register”. In accordance with the amendments to the “Law on Political Parties” adopted on 11 May 2012, a political party without registration cannot present itself or function as a registered political party. Another provision of the law raising concerns is related to the financing of parties. According to the recent amendments made to the “law on Political Parties”, 10 per cent of the funds allocated from the state budget will be divided proportionally to the number of earned votes, among the political parties that nominated candidates who earned at least 3 per cent of the valid votes in the last elections of the *Milli Majlis* of the Republic of Azerbaijan, but which are not represented in the *Milli Majlis*. 40 per cent of the funds will be equally divided among the political parties represented in the *Milli Majlis* and 50 per cent will be divided proportionally to the number of elected Members of the Parliament.

If the political parties refuse to accept the funds allocated from the state budget, those funds are returned to the state budget.

Profits gained from 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 lower organizations are also considered as financing of a po-

litical party. Amendments also introduced new provision stipulating that in accordance with the “law on Accounting”, a political party which failed to submit annual financial statement can be held liable within rules specified in the law.

In accordance with the article 16 of the “law on the Political Parties”, a political party should be liquidated upon the decision of its congress on liquidation or a decision of a court. The Ministry of Justice should issue a reasoned written warning to a political party when the political party violates the laws.

The Ministry of Justice should submit a motion to the court for liquidation of the political party, when a political party commits the acts to change the constitutional order and secular nature of the country, to violate territorial integrity, to promote war, violence and brutality, to instigate racial, national and religious hatred, to undertake other actions that are prohibit by the law and are not in line with international commitments of the country and when a political party fails to remedy the issues indicated in the warning of the Ministry.

Until the decision of the court on liquidation is made, functioning of a political party may be suspended on basis of the motion raised by the Ministry of Justice. To act or to speak on behalf of the liquidated political party, or to participate in conducting its activities illegally is prohibited by law.

Another legislation, which impose legal restrictions on opportunities for political participation in Azerbaijan and is repeatedly criticized, is “***the Law on Freedom of Assembly***” adopted on 13 November 1998. Most significant parts of the law are about venues where peaceful assembly is prohibited to be held and provisions mandating coordination of convening the assembly

with the local executive authorities. For example, in accordance with the article 9 of the law, conducting assemblies is prohibited in a radius of 200-meter around buildings of *Milli Majlis* (parliament), Presidential Palace, Presidential residence, Cabinet of Ministers, Cabinet of Ministers of the Nakhchivan Autonomous Republic, Supreme Congress of the Nakhchivan Autonomous Republic, bodies of central, city and regional executive power, the list of which should be defined by the relevant executive authority, as well as the Constitutional Court, the Supreme Court, Courts of Appeal and the Supreme Court of the Nakhchivan Autonomous Republic.

Moreover, freedom of assembly is also prohibited in following places:

- on bridges, in tunnels, at construction areas;
- on hazardous production facilities and other enterprises the operation of which requires observance of special safety rules;
- strictly protected environmental areas, and protection zones of trunk pipelines, electric wires of a tension more than 1000 V, airports, subway, railway constrictions, defence units, technical constrictions of water supply and sewerage systems, oil wells, water conservation zones;
- in places allocated by relevant body of executive power for conducting special state events;
- on the territory used for military purposes and in places located closer than on the territory used for military purposes and in places located closer than 150 meters to the boundaries of these territories, or, where necessary, within the security distance;
- at the territory of penitentiaries, pre-trial detention and

psychiatric medical institutions as well as in places located closer than 150 meters to the boundaries of these territories.

Holding assemblies of political content can be restricted in places of worship, chapels and cemeteries.

Unlike many the Council of Europe member states, in Azerbaijan, in addition to the prior notification of local executive authorities about assembly, the law requires coordination of such assemblies with local executive authorities. For example, in accordance with the article 5 of the "law on Freedom of Assembly", a person or persons organizing any assembly have to notify in advance the relevant body of executive power in written. A notification has to be submitted, as a rule, 5 days prior to the day of convening the intended assembly for coordinating its time and venue, and the route of a street procession in order to allow the relevant body of executive power to make necessary arrangements. In cases of notification in lesser time prior to the assembly, this should be justified by the organisers.

With the exception of spontaneous assemblies, Police have the rights to suspend an assembly which did not have a written notification, or if venue or time or, route of a street procession (venue of starting and finishing of a street procession) stipulated in a written notification was changed without justified reason. Police also can detain individuals who came to an assembly with spitfire and cold steel, pieces of stone, glass and wood, bludgeons that can create a danger for live and health of people or damage the property, as well as articles particularly designed for making body injury, explosives or pyrotechnic articles, potent, toxic, inflammable or corroding articles and radioactive materi-

als and send them away from the place of holding an event.

On 2 November 2012, new amendments to the “Law on Freedom of Assembly” and corresponding amendments to the Administrative Offenses and Criminal Code were adopted by the *Milli Majlis*, the parliament of the country. According to the amendments the law stipulates penalty from 5,000 to 8,000 AZN or up to 2 years of correctional work (community service) or up to 2 years of prison time for violation of rules of holding an assembly. In accordance with the previous legislation, violation of rules of holding assemblies was punishable by penalty in an amount from 100 to 500 AZN or up to 3 years of imprisonment.

New amendments to the Criminal Code will stipulate the stricter punitive measures such as penalty from 5,000 to 8,000 AZN or up to 3 years of prison time or up to 2 years of correctional work for conducting and attending assemblies in cases prohibited by the law which cause significant harm to citizens’ rights and legal interests (penalty was up to 500 AZN till the recent amendments).

The law also stipulates penalty from 5,000 to 8,000 AZN and up to 3 years of prison time for individuals who came to an assembly with spitfire and cold steel, explosives and other articles that can create a danger for live and health of people or damage the property.

Moreover, amendments to the chapters of the Criminal Code on correctional work were adopted increasing the amount of such work from 60-240 hours to 80-320 hours.

Restricting the sanctions for organizers and participants of unauthorized assemblies also considers relevant changes to the Code of Administrative Offenses. Provision on involving violator of the

law to the community servicewas added to the Article 23 of the code. It is also planned to increase the amount of penalty for individual persons to 3,000 - 5,000 AZN.

According to the amendments to the article 49 of the code, prevention of conducting social gatherings, meetings, demonstrations, street procession and pickets organized in accordance with the provisions of the legislation should involve penalization, for individual persons at the rate of 1,500 to 3,000 AZN, for officials from 3,000 to 6,000 AZN, and for legal entities from 15,000 to 30,000 AZN.

Moreover, amendments were made to the article 298 of the Code of Administrative Offenses regulating violation of order of organization and conducting of meetings, demonstrations, street processions and pickets. Organization and conducting of unauthorized assembly time and route of which was not coordinated with corresponding authorities entail imposition of penalty for individuals in amount of 1,500-3,000 AZN or 200-240 hours of community service or 15 days of administrative arrest; for officials penalty in amount of 3,000 - 6,000 AZN; for legal entities penalty from 15,000 to 30,000 AZN.

The law also mandates penalty in the rate from 500 to 1,000 AZN or 160-200 hours of community service or 15 days of administrative arrest for participation in unauthorized assemblies.

b) Situation of implementation of the “Law on Freedom of Assembly”

Observations of EMDS and other domestic NGOs show that since existing legal framework does not specify restrictions on holding peaceful assemblies and rallies, it allows local executive

authorities to apply political discrimination and to create artificial bureaucratic obstacles. As result of such policy, which has been systematically implemented, it was impossible to hold peaceful assemblies in city centers and main squares, in front of the state buildings, as well as, in Baku for many years.

According to the existing legal framework, despite a notification letter about the intention of holding peaceful assembly, civic group should also coordinate venue, date, duration and demands of the assembly with local executive authorities. However, requirement of "coordination" is often results in banning to hold assemblies in intended places and permitting to organize it only in outskirts of the city, as well as in some cases illegal refusal of permission to hold assemblies. Therefore, the major shortcoming in ensuring the freedom of assembly is the lack of clear plans of local executive authorities and dependence of the process on the political motives. For example, in order to find out whether local executive powers of regions and cities of the Republic of Azerbaijan allocate venues for assemblies, EMDS sent information request to 58 region/city executive powers with following text:

Article 9 of the "Law on Freedom of Assembly" of the Republic of Azerbaijan mandates that in every region and city, relevant local executive power should allocate special places for holding gatherings, meetings and demonstrations. At the same time, according to the article 7 of the "Statute on Local Executive Powers", head of the local executive power has a responsibility to conduct elections, referendums and discussions in accordance with rules specified by the law.

Guided by the abovementioned provisions and the "Law on

Accessing Information” of the Republic of Azerbaijan, we ask you to provide information on following questions:

(1) Have the special outdoor places for holding gatherings, meetings and demonstrations been allocated in the region/city of which you are acting as head of local executive power by your administration? If allocated, please submit copy of the relevant decree verified in accordance with requirements of the law.

(2) Have the special indoor places for holding meetings, mass public events and discussions organized by public organizations been allocated in the region/city of which you are acting as head of local executive power by your administration? If allocated, please submit copy of the relevant decree verified in accordance with requirements of the law to the below mentioned address. (Annex 1.)

However, although information requests were sent on 19-31 May 2012, during next two months, only 21 local executive authorities informed us on the date of registration of the information requests. And only Khachmaz region executive power properly responded to the request mentioning that 11 indoor and 11 outdoor places have been allocated for holding gatherings and meetings. Furthermore, special places for posting election campaigning materials have been also determined in the region.

During the telephone conversion, 1 executive power responded that the information request was delivered, but was not registered, while other 29 executive powers said that information requests were not delivered. Ujar executive power replied that *“we are not obliged to give information to citizens”*, while Nakhchivan executive power said *“we do not have information about it”*. Although 5 executive powers noted that they will

respond, no information was provided later.

During communication with local executive powers half of them mentioned that information requests were not delivered to them. However, in order to verify it, EMDS contacted “Azərpoçt” Limited Liability Company on 28 June 2012. In the letter sent by the “Azərpoçt”, it was mentioned that information requests to all 58 local executive powers were delivered on time and the relevant receipts of delivery were presented. (Annex 2.)

Restriction of the right to freedom of assembly in Azerbaijan is firstly driven by existing legal framework which envisages broad discretion for local executive powers for restricting freedom of assembly and includes the notion of “coordination” of peaceful gatherings limiting citizens rights *vis a vis* state. The reason behind inadequate work of local executive powers to fulfil their duties for ensuring freedom of assembly is lack of determination and political will for protection of political freedoms by the central executive powers. Since local executive powers are representatives of the central authority, they operate in accordance with the political will of the government and the political discrimination demonstrated by these institutions should not be regarded as accidental tendency.

c) Opportunities and capacity for political participation

EMDS conducted brief survey to assess opportunities and capacities of political parties and organizations operating in Azerbaijan for participating in socio-political processes in the country.

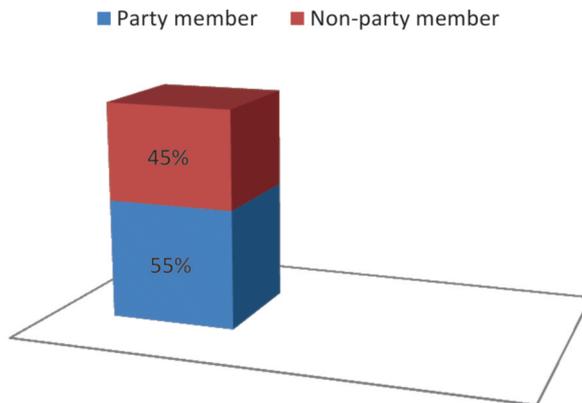
Information on Respondents:

The survey was conducted among 272 persons actively involved in socio-political processes in the country and 83% of whom were men while 17% were women.

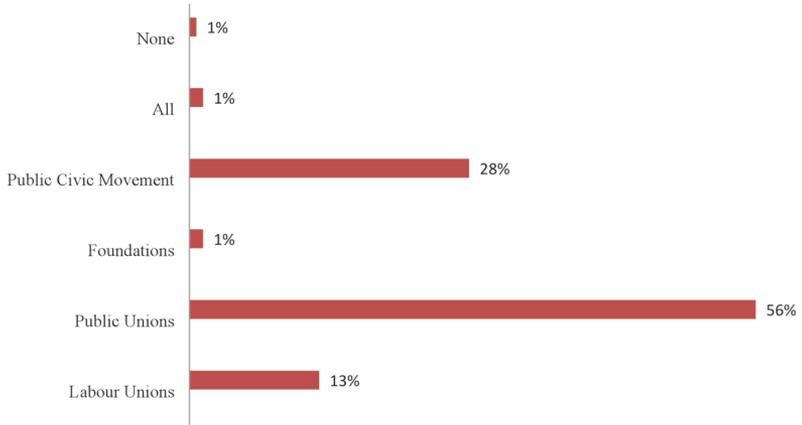
38% of respondents were 18-25 years old, while 16% belong to the 26-35 age group. 46% of survey participants were above 36 years old.

Respondents live and work in 26 administrative regions of the country.

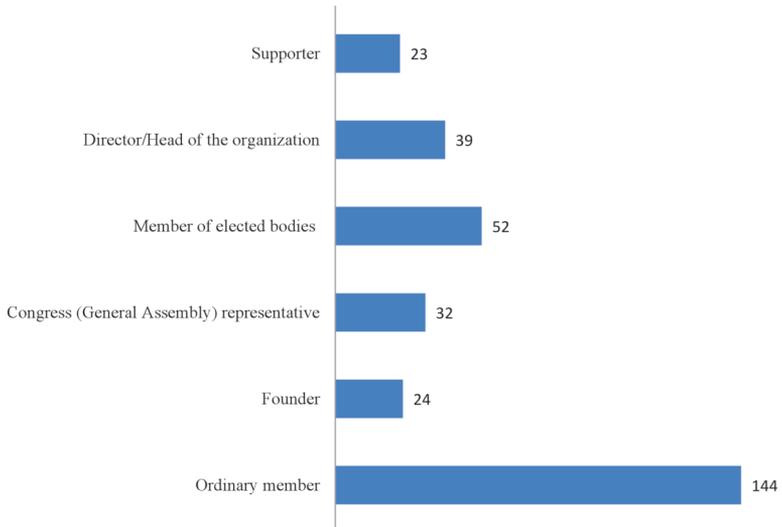
Political affiliation of respondents:



Representation of respondents in non-governmental bodies:

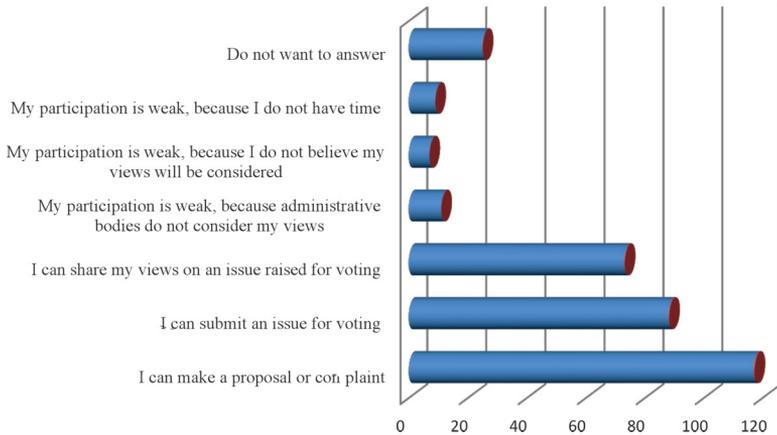


Responsibilities of respondents in their organizations:



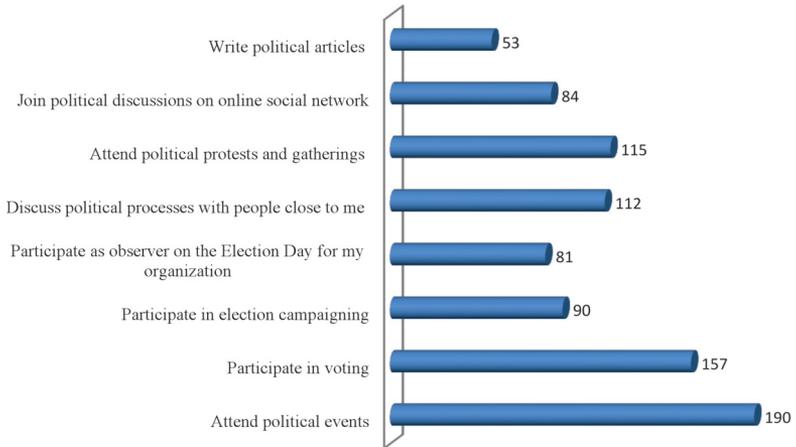
Experience in participation in socio-political processes:

The survey included question on ***“what is the level of your participation in decision-making process of your organization”*** and according to findings, the situation of internal decision-making process and pluralism is satisfactory.



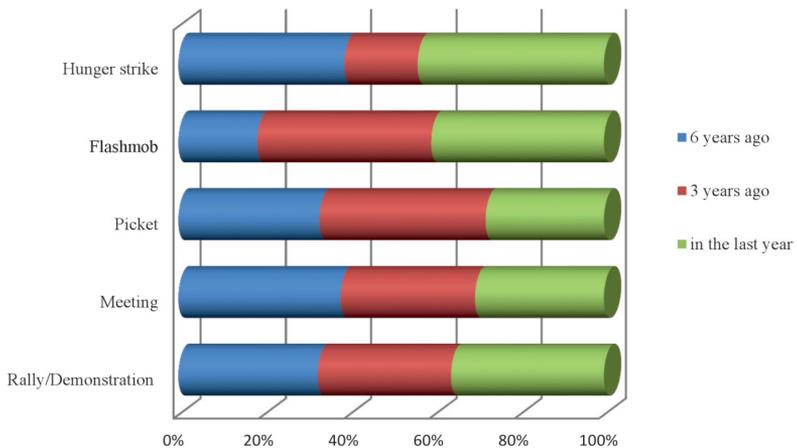
To the question ***“in which forms do you participate in political processes”*** respondents mentioned that they are most active during “political gatherings”, “political protests” and “discussions on political processes”.

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In order to learn opportunities of respondents to utilize their right to freedom of assembly following question was addressed:

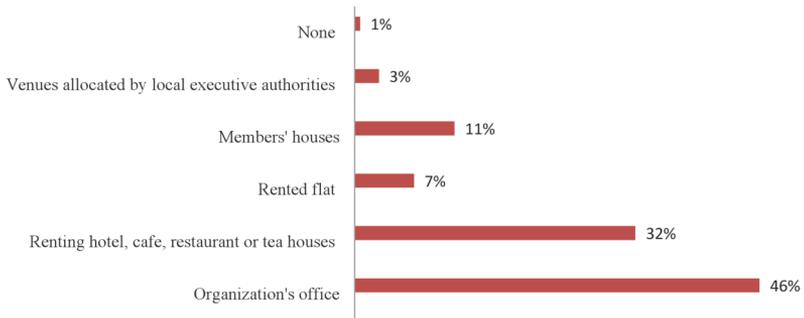
What kind of protest action did you attend last time?



Resources and opportunities for socio-political activities:

Survey included several questions on resources and opportunities for engaging in socio-political activities:

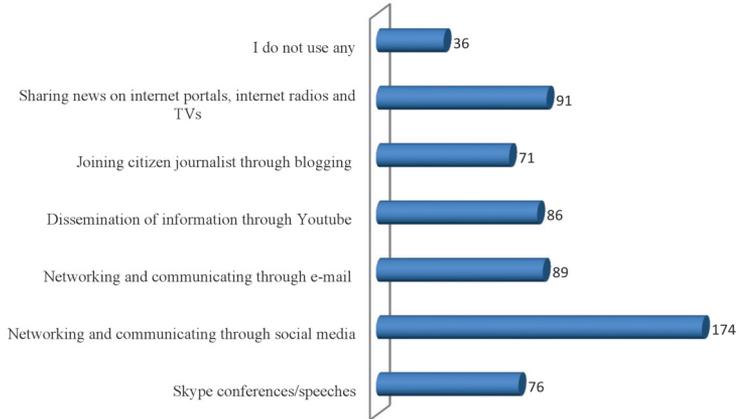
Which venues do you use for conducting meetings and gatherings of your organization?



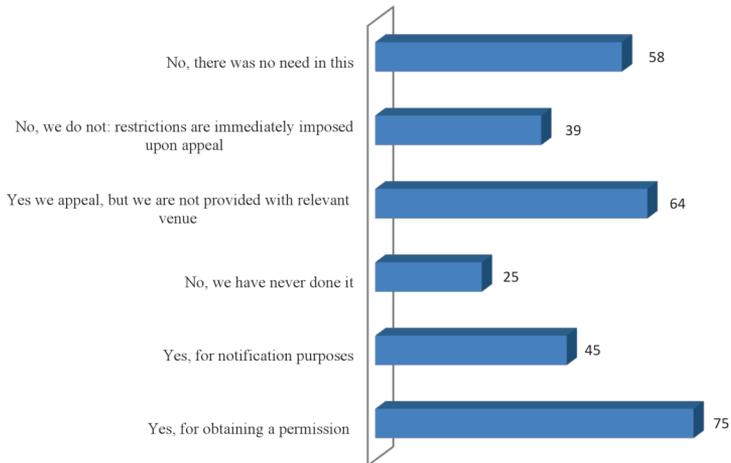
Which resources do you consider most important for engaging in socio-political activities?



Which of the below-mentioned internet and social media tools are most effective for engaging in socio-political activities?

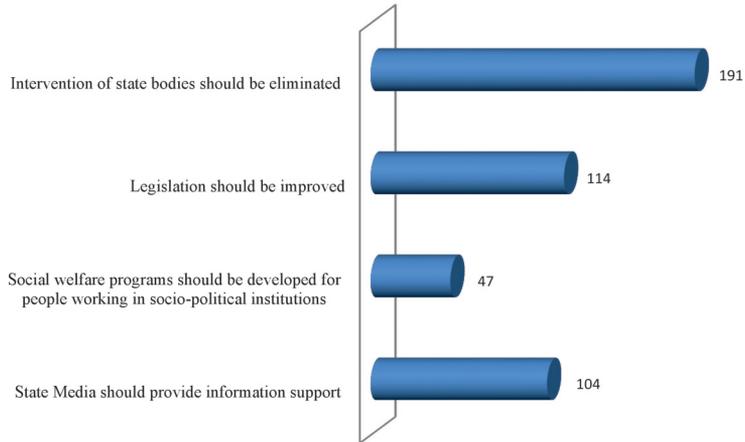


Have you appealed to the local executive powers for organizing meetings (congresses) and events (seminars, trainings or conferences) of your organizations?

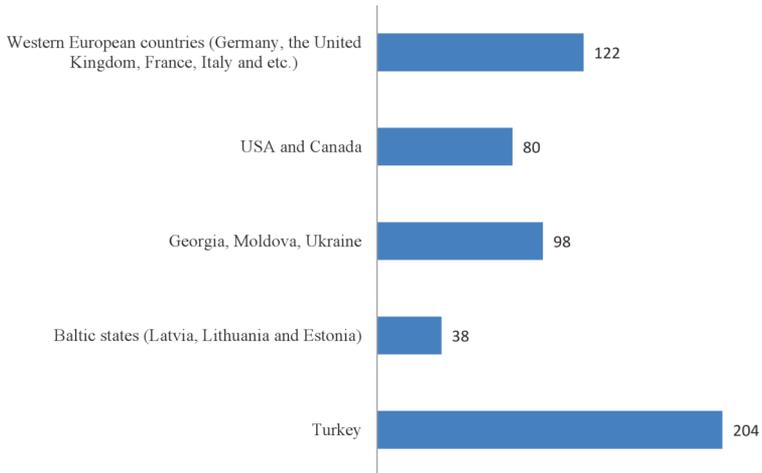


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Which conditions should be ensured by the state for engaging in socio-political activities?



Socio-political processes of which of the following states do you regularly follow?



d) Initiatives on improvement of legislation

Political parties and public organizations of the country proposed number of initiatives for improvement of legislation on political participation. Particularly, draft proposals and recommendations were designed for improvement of the “Law on NGOs” and the “Law on Labour Unions”. For example, League of Protection of Labour Rights of Citizens and Committee of Protection of Oil-workers’ Rights proposed changes and amendments to the “Law on Labour Unions”. At the same time, in the recent years, Legal Education Society, Center for Law and Development, Azerbaijan Association of Lawyers, Studying Democracy Public Unions presented recommendations and proposals on improvement of legislation on freedom of assembly and freedom of association.

In the last year, EMDS conducted comparative analysis of legislation of countries participating in Eastern Partnership program of European Union (Azerbaijan, Belarus, Armenia, Georgia, Moldova and Ukraine) on political participation including freedom of assembly and freedom of association. The organization published Assessment Paper¹ based on the findings of the analysis both in English and Azerbaijani languages². Moreover, based on the guidelines of the Council of Europe and legislation of other Eastern Partnership countries, EMDS designed draft law proposals on additions and amendments to the “Law on Freedom of Assembly” (Annex 3.) and to the “Law on Political Parties” (Annex 4.).

¹ <http://smdt.az/images/stories/PDFler/dayarlanmaen.pdf>

Draft Law proposal on additions and amendments to the “Law on Freedom of Assembly”

Taking into account guidelines of the Venice Commission of the Council of Europe on the freedom of assembly, EMDS strongly believes that broad discretion of state bodies over interpretation and implementation of relevant legislation should be reduced. Moreover, unfortunately, existing “Law on Freedom of Assembly” imposes restrictions contrasting fundamental human rights and freedoms mentioned in the European Convention and the Constitution.

EMDS believes that regulation of the right to freedom of assembly by present law should be removed from Article 1 and only provisions on restrictions should be left.

Second paragraph of the article 1 of the law mandates intended gatherings to be in line with the requirements of this law which is the restriction of the right ensured by the Constitution. Therefore, such provision requiring gatherings to be in line with this law should be removed.

Article 3 of the law provides definition of the gatherings and includes all gatherings under the jurisdiction of this law. However, it should be noted that only gatherings for the purpose of demonstrating and expressing protest should be regulated by this law. Moreover, forms of gatherings were also presented in this article making it close to broad interpretation. In order to give freedom to citizens to choose the forms of implementation of their constitutional right, *other forms not prohibited by the law* should also be added to the article.

Notification prior to the assembly should be eliminated like in

other member countries of the Council of Europe. Notification should be required only for provision of reasoned security measures and organization of actions of the situation created by other assemblies held in the same venue. Indeed, notification mandated by the article 5 of the law is in essence permission. Therefore, the law should not include provisions stipulating prior notification for coordination of assembly's place and time, but should require such notification only for the purposes of specifying the route of rally and should not impose any obligation on organizers. Notification should not include detailed information about organizers while signature of all organizers should not be required and local executive powers should not have discretion to impose additional restrictions.

Since the form of the assembly should be left open for the discretion of participants and/or organizers, the provision requiring participation of organizers in assembly should be removed from the article 6.

Third chapter of the law describes peaceful assemblies creating opportunity for executive authorities to name some assemblies non-peaceful and to exercise power that are not regulated by this law. Therefore, like in majority of European countries, the term "peaceful" should be removed from the title of the chapter.

The article 7 specifies basis for restricting freedom of assembly and this provision is motivated by the protection of other persons' rights while it is in contrast with implementation of more important and fundamental right to freedom of assembly. Therefore, the article should be amended in the way to allow restrictions only in the light of protection of fundamental rights of other citizens.

EMDS strongly believes that freedom of assembly should not be restricted under the assumption of violation of public order. The law should exercise restrictions only on the basis of violations that took place and this provision should be amended into "*restoration of public order*".

Since the article 8 of the law fails to consider discriminations in line with law, expression "*against law*" and based on the recommendations of the Venice Commission, sexual discrimination should be added to the article.

The law envisages the right to ban assemblies to executive authorities. Since the suspension of assembly is contingent decision, this can be executed by the executive authorities. However, with regard to authorized body, difference should be made between banning assembly prior to the event and suspending assembly while it is in process. Moreover, the expression "necessary cases" that the provision on suspension indicates is vague and such necessary cases should be based on requirements of democratic society.

Paragraphs 3, 4 and 6 of the article 9 stipulate list of places where conduct of assemblies are prohibited conflicting with the Constitution and violating right to freedom of assembly of citizens. Therefore, these paragraphs should be removed and the paragraph 5 should be amended showing only difference between pickets and meetings.

Right to the restrict time and duration of assembly should not be given to the relevant executive authorities, but should be undertaken by the court.

Duties illegally imposed on organizers by the article 12 of the law

should be eliminated, since the state should not transfer its duties to organizers. Therefore, restriction of organizers' freedom of expression, duties arising from prior notification requirement which is in fact a permission and requirements such as carrying visible signs distinguishing them should be removed.

Burdening participants with additional duties specified in the article 13 should be eliminated. Provisions envisaging restriction of participants' freedom of expression and duties for protection of public order should be removed from the law as well.

Second paragraph of the article 14.1 should be removed due to fact that it transforms the notification process into permission. At the same time, third paragraph of the article stipulating actions of police bodies in case of violation of conditions specified in the notification should be amended removing the expression *suspend assembly if venue or time of this assembly mentioned in the notification were changed*. Executive authorities should have a right to suspend only street processions in case of such changes. Paragraph 5 of the article lists means of force that can be used by police and internal troops during dispersal of assembly which is open to broad interpretation ("and other special means"). Narrow interpretation of the provision is required for regulation of actions of police bodies during dispersal of assembly.

Moreover, based on recommendations of the Venice Commission and general legal thought, several provisions regarding duties of police bodies should be added to the law: using only vehicles with official MIA (Ministry of Internal Affairs) signs for transportation of detained participants, employing female police officers, retaining from using police officers in civil clothes.

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The expression *powers of bodies of police are not limited to the present law* should be removed from the article 14 and should be replaced with *powers of police bodies with regard to freedom of assembly are limited to this law*.

Draft law on additions and amendments to the “Law on Freedom of Assembly”

Taking into account guidelines of the Venice Commission of the Council of Europe, EMDS believes that establishment of basis of political parties in Azerbaijan, particularly the ruling party, which misuses and abuses administrative resources, at the educational institutions contrast with the principle of prohibition of political and religious propaganda in educational institutions. Therefore, educational institutions should be added to the article 4 of the law which specifies places where political propaganda is prohibited.

Moreover, considering that provision stipulating minimum 1,000 persons to establish a political party creates additional bureaucratic obstacles, the organization recommends to lower the number to 300 in line with practice of many member states of the Council of Europe.

Since gender discrimination was explicitly mentioned in the recommendation of the Venice Commission, establishment and functioning of parties aiming or seeking gender discrimination should be added to the paragraph 4 of the article 4 – list of actions prohibited by the law.

Article 5 of the law stipulates forms of functioning of political parties and presents concrete list, which is not conducive to the broad interpretation. Since legislation should only indicate ac-

tivities that are prohibited, in order to make this article open to broad interpretation *“other forms of activities that are not prohibited by the law”* should be added to the law.

Article 5-1 stipulates that one of the conditions for establishing a political party is publication of information about venue and date of the constituent congress of political party in mass media. Since such requirement is unnecessary complication of conditions for establishing a political party according to the Venice Commission and are not practiced in other Eastern Partnership Countries, it should be removed.

Restrictive requirements for establishment of political parties are also reflected in requirements imposed on Charter of parties indicated in the article 6. Requiring information that is not necessary for establishment of a political party is intervening with internal organization of party. Therefore, provisions mandating party charter to include information on disciplinary measures that might be imposed on the members and the grounds for their imposition, mutual relations with the territorial organizations, conditions, forms and terms of convocation of meetings of the members of the party and their representatives, and sources of the funds and other property of the political party should be removed.

Article 12 of the law stipulates concrete rights of political parties leaving it close to broad interpretation. Therefore, *“other rights that are not prohibited by the law”* should be added to the article.

According to the recommendations of the Venice Commission, article 13 of the law should include provisions stipulating punitive measures against state officials interfering with activities of

political parties, obligation of local executive powers to provide office for parties on parties' expenses and provision of weekly free airtime on Public Television for political parties financed by the state budget.

Prohibition of functioning of political parties without state registration raises concerns as violation of the right to freedom of association. Therefore, EMDS recommends that article 14.2 mandates that political parties without state registration should not act only as legal entity. Any association should be able to declare it a political party and act like political party without state registration.

Article 16 indicates grounds for liquidation or suspension of political party upon motion submitted to the court by the Ministry of Justice. To prevent executive authorities to have broad power over the issue, the law should mandate the liquidation of political party only by decision of the court.

EMDS believes that article 17-1.2 stipulating rules for allocation of funds to political parties from state budget should be changed and main criterions for financing parties from state budget should be representation of political parties by administrative regions of the country and number of candidates nominated during last parliamentary elections.

Since articles 17-1.4 and 19.4, which stipulate allocation of funds only through transfer to bank account of party, create additional bureaucratic obstacles for financing political parties, these should be amended introducing ability to receive funding by cash as well. Moreover, article 19.6 of the law which violates anonymity of donors should be removed.

III. CONCLUSIONS AND RECOMMENDATIONS

Findings of EMDS's analysis show that existing legal framework and practices of political participation in the Republic of Azerbaijan significantly restrict opportunities for political participation of socio-political organizations. Establishment of socio-political organizations and political parties and their functioning during period between elections and utilizing their rights to freedom of assembly are marred with legal, administrative and political restrictions.

EMDS conducted comparative assessment of opportunities for political participation in number of member states of the Council of Europe, particularly in European Eastern Partnership countries and strongly believes that improvement of legislation and practice of participation in political processes in following areas are required:

“Law on Freedom of Assembly” imposes complicated and restrictive regulations over implementation of citizens’ right to freedom of assembly in Azerbaijan. Azerbaijani government should demonstrate political will to improve the law in accordance with guidelines of the Venice Commission of the Council of Europe and to consider opinions and recommendations of domestic organizations while doing so.

“Law on Political Parties” stipulates significant restrictions on establishment, functioning and financing of political parties in the country. This law should be improved based on guidelines of the OSCE Office for Democratic Institutions and Human Rights

and Venice Commission of the Council of Europe.

Central executive authority should demonstrate political will for instructing local executive powers to undertake more accountable and responsible actions for assisting holding assemblies in indoor and outdoor places.

Opportunities of political parties to function are mainly restricted by administrative and political interventions of local executive powers. In order to prevent such irregularities, both relevant additions and amendments should be made to the legislation and existing practice should be improved.

Milli Majlis (Parliament) of the Republic of Azerbaijan should support initiatives on improvement of legislation on political participation and should engage in the process of development of inclusive democracy in the country.

Milli Majlis should demonstrate efforts to improve the “Law on Freedom of Assembly” and the “Law on Political Parties” based on legislation of some Eastern Partnership countries such as Georgia, Moldova and Ukraine on political freedoms and should contribute to the bringing legislation of Azerbaijan in line with European standards.

IV.ANNEXES

ANNEX 1.

EMDS sent information requests to following 58 region/city executive power:

N	Region/ city name	Sent date	Delivery date	Response
1.	Absheron	19.05.2012		Call in half an hour, but later calls were not answered.
2.	Aghjabadi	19.05.2012		Letter was not delivered.
3.	Aghdam	21.05.2012		Calls were not answered
4.	Aghdash	21.05.2012	24.05.2012	
5.	Aghstafa	21.05.2012		Calls were not answered.
6.	Aghsu	21.05.2012		Letter was not delivered.
7.	Astara	21.05.2012		Letter was not delivered.
8.	Baku	19.05.2012		We were told to call in 10 minutes, but later calls were not answered.
9.	Balakan	23.05.2012		Letter was not delivered.
10.	Barda	22.05.2012		Letter was not delivered.
11.	Beylagan	23.05.2012		We were told to call in 20 minutes, but later calls were not answered

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12.	Bilasuvar	23.05.2012	30.05.2012	
13.	Jalilabad	23.05.2012		Calls were not answered.
14.	Dashkasan	23.05.2012		Calls were not answered.
15.	Fuzuli	19.05.2012		Letter was not delivered
16.	Ganja	21.05.2012		Letter was not delivered
17.	Gadabay	19.05.2012		We were told to call in 15 minutes, but later calls were not answered
18.	Goranboy	23.05.2012	29.05.2012	
19.	Goychay	19.05.2012	27.05.2012	
20.	Goygol	19.05.2012	01.06.2012	
21.	Hajigabul	21.05.2012	29.05.2012	
22.	Khachmaz	29.05.2012	02.06.2012	
23.	Khizi	23.05.2012		Letter was not delivered
24.	Imishli	21.05.2012		At first, it was said that the letter was delivered, but not registered. Later, we were told that letter was not delivered.
25.	Ismayilli	22.05.2012		Calls were not answered
26.	Kurdamir	23.05.2012	29.05.2012	
27.	Gakh	22.05.2012	01.06.2012	
28.	Gazakh	29.05.2012	04.06.2012	
29.	Gabala	19.05.2012		Letter was not delivered

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30.	Gobustan	21.05.2012	24.05.2012	
31.	Guba	19.05.2012		Letter was not delivered
32.	Gusar	19.05.2012	23.05.2012	
33.	Lerik	21.05.2012		Letter was not delivered
34.	Lankaran	21.05.2012	24.05.2012	
35.	Masalli	19.05.2012	22.05.2012	
36.	Mingachevir	21.05.2012	29.05.2012	
37.	Nakhchivan	19.05.2012		All questions were responded with "we do not know". Therefore, it was not possible to find out whether the letter had been delivered.
38.	Naftalan	23.05.2012		Calls were not answered.
39.	Neftchala	19.05.2012	21.05.2012	
40.	Oghuz	22.05.2012	23.05.2012	
41.	Saatli	22.05.2012	29.05.2012	
42.	Sabirabad	31.05.2012		Calls were not answered.
43.	Salyan	21.05.2012		Calls were not answered.
44.	Samukh	19.05.2012		Letter was delivered, but since we are seeing such document for the first time, we do not know how to register it.

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45.	Siyazan	19.05.2012	28.05.2012	
46.	Sumqayit	22.05.2012		Letter was not delivered.
47.	Shabran	19.05.2012		Letter was not delivered.
48.	Shamakhi	19.05.2012		We were told to call later, they will investigate and respond, but later calls were not answered.
49.	Shaki	19.05.2012	24.05.2012	
50.	Shamkir	19.05.2012		Calls were not answered.
51.	Shirvan	19.05.2012		Letter was not delivered.
52.	Tartar	31.05.2012	05.06.2012	
53.	Tovuz	21.05.2012		Letter was not delivered.
54.	Ujar	29.05.2012		Head of General department said "we are obliged to inform citizens!" and hung up.
55.	Yardimli	22.05.2012		Letter was not delivered
56.	Yevlakh	22.05.2012		Calls were not answered.
57.	Zagatala	22.05.2012		Calls were not answered.
58.	Zardab	21.05.2012		Calls were not answered.

ANNEX 2.

Dates of delivery of letters to 58 local executive authorities provided by the "Azərpoçt" Limited Liability Company

N	Region/city name	Official delivery date by "Azərpoçt" LLC
1.	Absheron	23.05.2012
2.	Aghjabadi	23.05.2012
3.	Aghdam	25.05.2012
4.	Aghstafa	24.05.2012
5.	Aghsu	24.05.2012
6.	Astara	24.05.2012
7.	Baku	23.05.2012
8.	Balakan	26.05.2012
9.	Barda	29.05.2012
10.	Beylagan	29.05.2012
11.	Jalilabad	25.05.2012
12.	Dahkasan	29.05.2012
13.	Fuzuli	29.05.2012
14.	Ganja	24.05.2012
15.	Gadabay	24.05.2012
16.	Khizi	29.05.2012
17.	Imishli	24.05.2012

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18.	Ismayilli	25.05.2012
19.	Gabala	23.05.2012
20.	Guba	24.05.2012
21.	Lerik	25.05.2012
22.	Nakhchivan	23.05.2012
23.	Naftalan	25.05.2012
24.	Sabirabad	04.06.2012
25.	Salyan	24.05.2012
26.	Samukh	23.05.2012
27.	Sumgayit	22.05.2012
28.	Shabran	23.05.2012
29.	Shamakhi	23.05.2012
30.	Shamkir	24.05.2012
31.	Shirvan	23.05.2012
32.	Tovuz	25.05.2012
33.	Ujar	02.06.2012
34.	Yardimli	25.05.2012
35.	Yevlakh	25.05.2012
36.	Zagatala	28.05.2012
37.	Zardab	24.05.2012

ANNEX 3.

Draft Law on additions and amendments to the “law on Freedom of Assembly” of the Republic of Azerbaijan

- 1) To remove words **“implementation and”** from **paragraph I of Article 1.**
- 2) To remove words **“organized in accordance with the present Law”** from **paragraph II of Article 1.**
- 3) To remove words **“on the basis of the present Law”** from **paragraph I of Article 2.**
- 4) **To amend Article 3 as follows:**

“Notion of “assembly” in the present Law means temporary gathering of a number of persons in a public place, with intention to express or demonstrate their protest. Such an assembly may be in the form of gathering, meeting, demonstration, street procession, picket and with exception of assemblies specified in Article 4 of the present Law, other forms that are not prohibited by the law.”

- 5) **To amend paragraph I of Article 5 as follows:**

“I. A person or persons organizing any assembly enumerated in Article 3 of the present Law have to notify in advance the relevant body of executive power in written. A notification has to be submitted, as a rule, 5 days prior to the day of convening the intended assembly for providing necessary security measures and for coordinating the route of a street procession in order to allow the relevant body of executive power to make necessary arrangements.”

6) To remove clauses 6 and 9 from paragraph II of Article 5.

7) To remove provision III from Article 5.

8) To add paragraph V to Article 5 with following meaning:

“V. Assemblies that do not require submission of written notification can be restricted or suspended only in cases specified in paragraph I of Article 7 of present law; street procession can be restricted or suspended only in case if it creates significant obstacles to functioning of public transport. In all other cases, in case of law is not violated any interference of executive power with assembly is prohibited. Organizers and participants of assemblies and street processions without prior written notifications shall not be held liable, criminally, administratively or financially, for organizing or participating in assemblies or street procession.”

9) To remove paragraph IV from Article 6

10) To remove the term **“Peaceful”** from the title of **Chapter 3**

11) To add words **“more important than freedom of assembly”** after words **“other persons”** in **paragraph I of Article 7**

12) To amend clause 2 of paragraph I of Article 7 as follows:

“for restoring public order”

13) To add terms **“and moral”** after term **“health”** in **clause 4 of paragraph I of Article 7.**

14) To remove clause 5 from paragraph I of Article 7.

15) To add words **“more important than freedom of assembly”** after words **“other persons”** in **clause 6 of**

paragraph I of Article 7.

- 16) To add term **“against law”** before term **“discrimination”** and term **“gender”** after term **“racial”** in **paragraph I of Article 8.**
- 17) To add words **“court upon motion raised by”** before words **“relevant body”** in **paragraph IV of Article 8.**
- 18) To add words **“court upon motion raised by”** before words **“relevant body”** in **paragraph V of Article 8.**
- 19) To add words **“in democratic society”** before words **“in necessary cases”** in **paragraph V of Article 8.**
- 20) To remove paragraphs III, IV and VI of Article 9.**
- 21) To remove words **“and they shall not be located closer than 10 meters to the entrance of a picketed object, shall not make obstacles for entry and exit into the picketed object”** from **paragraph V of Article 9.**
- 22) **To amend paragraph VII of Article 9 as follows:**

“VII. The time of holding of an assembly can be restricted by the decision of the court upon request of the relevant body of executive power, in accordance with the requirements of Article 7 of this Law.”
- 23) To remove second sentence from paragraph II of Article 12.**
- 24) To remove words **“pursuant to conditions stipulated in a written notification and applicable to an assembly”** from **paragraph III of Article 12.**
- 25) To remove paragraphs IV and VI from Article 12.**

26) To remove second sentence from paragraph III of Article 13.

27) To remove words **“assist in protection of public order and”** from **paragraph IV of Article 13.**

28) To replace term **“Power”** with the term **“Rights and Duties”** in title of **Article 14.**

29) To remove clause 2 of paragraph I of Article 14.

30) To remove words **“time and place of assembly”** from **clause 3 of paragraph I of Article 14.**

31) To replace term **“assembly”** with term **“street procession”** in **clause 3 of paragraph I of Article 14.**

32) To remove words **“and other special means designed for these purposes”** from **paragraph V of Article 14.**

33) To remove paragraph VII from Article 14.

34) To add paragraphs VIII, IX, X and XI with following meanings:

“VIII. Bodies of police with authority to interfere with assembly shall be in official uniform. Interference of police bodies in civil clothes with assembly shall be prohibited.

IX. Participants detained by bodies of police can be taken to police station using vehicles which belong to the Ministry of Internal Affairs and can be distinguished by official signs. Members of bodies of police using civilian vehicles and/or vehicles of citizens by force shall be held liable in accordance with the requirements of the Law.

X. The bodies of police provided for ensuring security dur-

ing assembly shall include female police officers and female police officers shall be used while applying physical force against female participants of assembly.

XI. Powers of bodies of police provided for in the legislation of the Republic of Azerbaijan are limited to the present Law with regard to freedom of assembly.”

ANNEX 4.

Draft Law on amendments and additions to the “Law on Political Parties” of the Republic of Azerbaijan

- 1) To remove words **“by citizens of the Republic of Azerbaijan”** from **Article 1.**
- 2) To add words **“as well as in all educational institutions”** after term **“bodies”** in first sentence of **Article 4.**
- 3) To replace number **“1000”** with **“300”** in third sentence of **Article 4.**
- 4) To add term **“genderdiscrimination”** after term **“instigate”** in fourth sentence of **Article 4.**
- 5) To add **“other ways that are not prohibited bytheLaw”** to the end of **Article 5.**
- 6) To remove Article 5-1.3.**
- 7) To remove following sentences from Article 6:**

“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;”

“mutual relations with the territorial organizations;”

“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;”

8) To add article 12.1.9 in following meaning:

“12.1.9. Other rights specified by the Law.”

9) To remove Article 12-1.2.

10) To amend paragraph 3 of Article 13 as follows:

“The interference with the activities of political parties by State bodies and officials shall not be allowed, except for cases provided for by law. Officials of State bodies violating this stipulation shall be held liable in accordance with Law.”

11) To add paragraphs 4 and 5 to Article 13 with following meanings:

“4. Upon request of a political party, local executive power shall allocate relevant venue and provide necessary conditions for a political party to obtain office on expenses of a political party. A political party cannot be deprived from office by local executive power.

5. In accordance with Article 17-1 of present Law, free airtime in Public Television shall be allocated on the weekly basis. Time of free airtime shall be equally divided among all political parties that are entitled to this right.”

12) To replace words “a political party which has not undergone state registration” with words “legal entity” in Article 14.2.

13) To amend article 16.3 as follows:

“16.3. The Ministry of Justice of the Republic of Azerbaijan shall issue a reasoned written warning to a political party when the political party commits acts provided in the fourth

paragraph of Article 4 of this Law”

14) To amend Article 16.4 as follows:

“16.4. When a political party fails to remedy the issues indicated in the warning provided in the Article 16.3 of this Law, the Ministry of Justice shall submit a motion to the court for holding the political party liable.”

- 15) To replace words “**relevant body of executive authority**” with words “**the Ministry of Justice**” in **Article 16.5.**

16) To amend Article 17.1 as follows:

“17.1. Activities of political parties shall be financed through funds they have obtained in accordance with this Law and allocation of funds from the state budget.”

- 17) To add words “**non resident of the Republic of Azerbaijan**” to the beginning of **Article 17.2.4.**

18) To remove Article 17.2.6.

- 19) To remove term “**public unions and foundations**” from **Article 17.2.8.**

20) To remove Article 17.2.9.

- 21) To add words “**and shall not exceed 0.3% of state budget**” to **Article 17-1.1.**

22) To amend Article 17-1.2 as follows:

“17-1.2 . 40 percent of the funds allocated from the state budget shall be divided among political parties functioning in at least 1/3 of administrative regions of the Republic of Azerbaijan proportionally to the number of regional

organizations of parties, 30 per cent shall be divided among the political parties or blocs that nominated candidates during the last parliamentary elections and are not represented in the *Milli Majlis* of the Republic of Azerbaijan proportionally to the number of candidates nominated, another 30 per cent of funds shall be divided among political parties represented in the *Milli Majlis* of the Republic of Azerbaijan proportionally to the number of elected Members of the parliament.”

- 23) To replace words “**transferred to the bank account of political party**” with words “**allocated to a political party via bank transfer or cash**” in **Article 17-1.4**.

24) To add Article 17-1.7 with following meaning:

“17-1.7. Funds allocated from state budget should not account for more than half of overall budget of a political party.”

- 25) To replace words “**shall be received in the form of transfer to the bank account of political party**” with words “**shall be received in the form of cash or transfer to the bank account of political party**” in **Article 19.4**.

- 26) To remove words “**about persons granting donations**” from **Article 19.6**.