

Election Monitoring and Democracy Studies Centre

OPINION

On the Draft Proposal on Political Parties

I. Introduction

Election Monitoring and Democracy Studies Centre (EMDS) has investigated and analysed the amendments and changes to the law on political parties which is likely to be discussed by the Milli Majlis of the Republic of Azerbaijan in the near future.

It should be reminded that, the draft proposal on amendments and changes to the law on political parties was presented to the Venice Commission of the Council of Europe by the initiative of the Presidential Administration of the Republic of Azerbaijan in July, 2011. In October, 2011 experts of the Venice Commission of the Council of Europe (VCCE) held a working meeting with the representative of the Azerbaijani government on the aforementioned amendments to the draft law.

EMDS regretfully states that, while the aforementioned document was presented to VCCE, it has not been presented to the public, members of the parliament and political parties and public discussions regarding this have not been held yet.

It should be noted that, the law on political parties of Azerbaijan that is currently in force was adopted on 3 June 1992. During past 19 years the Constitution has been adopted, 2 referendums on amendments to the Constitution were held, various laws regulating political relations were adopted. At the same time changes in the political processes of the country urged necessity to make amendments and changes to this law.

II. Restrictive Amendments and Changes in the Draft Proposal

In the document it is proposed to make 26 amendments and changes to the law on political parties. EMDS notes that, some changes bear technical character and appraises it as step toward simplifying of the law. At the same time, for the first time, there are provisions on financing of political parties from the state budget. EMDS appreciates this innovation and hopes that this experience, which is widespread in the Council of Europe member states will help to develop resources of the political parties. But along with some positive changes, serious provisions restricting establishment, activity and financing of political parties have

been proposed. EMDS has grouped the new amendments and changes as creating concern in the following way:

a) **New conditions on establishment and registration of political parties**

The draft law demands membership of at least 5000 citizens for registration of the political party. It should be noted that, in the current law this number is 1000 people. Along with that, the draft proposes presentation of documents, which would confirm a number of members within a month of establishment of party for its registration.

EMDS considers that, the aforementioned amendments on establishment and registration of political parties proposed to the law will create serious difficulties in the process of formation of political parties. Such provisions will restrict citizens' political participation opportunities by creating baseless bureaucratic problems for organization and formation of political parties. In general, the amendments on establishment of political parties proposed in the draft proposal cannot be considered grounded. Because requiring 5000 people instead of 1000 for creating a political party will create limitations, along with making the process of establishment of political parties longer. Other questionable issue is a provision requiring presentation of documents of all members, i.e. copies of either ID documents or membership documents to the relevant executive structure (Ministry of Justice of the Republic of Azerbaijan) in order to register a political party. Such provisions will needlessly increase the work of both members of political parties and relevant executive structures.

b) **Restrictions for activity of political parties**

Excluding founding and registration activities, it is prohibited to speak publicly and operate on behalf of unregistered political party or to participate in its activities and organization of its activities in the draft proposal. EMDS considers that, it will create serious restrictions to the activity of political parties on the stage of registration and is directed toward violation of freedom of association of citizens. Because process of creation of a political party, recruitment of members and registration can be prolonged for months and if any obstacle is created for a political party at the stage of registration, this will legally interfere in the process of foundation of a political party. EMDS considers it necessary to remove this provision from the draft proposal considering existence of political discrimination factor in the activity of the Ministry of Justice on registration of legal entities.

EMDS states its concern with respect to provision in the draft proposal stating the following: ***“activity of political party can be frozen upon request of relevant executive structure, until adoption of court decision on abolishment of a political party”***. Freezing political party's activity without court proceedings on the action of a political party, which caused complaint, and court finding it guilty for violation of legislation lgesitlation will cause severe violation of right to fair trial and freedom of association.

Also in the draft proposal there are provisions, which are not clear and concrete, which in future will strengthen anti-democratic control of the state over political parties. For example, according to proposed amendments, political parties cannot interfere with the activity of state bodies and officials. But such “interferences” are not defined. EMDS states that, existence of such provisions in the law on political parties might be turned against parties being critical of political situation, especially political power.

Another complex provision in the draft is *“freezing of the activity of political parties, which prevent liquidation of consequences of emergency situations, by the court”* by the court. In that provision *“consequences of emergency situations”* are not defined.

c) **Financing of political parties**

EMDS appreciates the idea of financing of political parties from the state budget in the draft proposal. But unfortunately, this opportunity is only applicable to parties, which gained more than 3% of votes at the last parliamentary elections.

EMDS considers that, rules of allocation of financing from the state budget is biased and does not reflect existing socio-political realities and needs. For example, according to the draft, 10% of the allocated funds shall be divided among parties, which had their candidates running and gained at least 3% of valid votes, but did not gain representation in Milli Majlis; 40% among political parties represented in Milli Majlis and 50% proportionally among parties in accordance with their representation in Milli Majlis. Unfortunately, only results of the previous parliamentary elections are mentioned as benchmarks for financing of political parties from the budget. But 3 parliamentary elections held during last 16 years show that, those elections were neither free, democratic, nor fair. Thus, referring to results of elections in financing of political parties cannot be considered fair. The other issue is the fact that it is not based upon 2 parliamentary elections held during last 6 years. It should be reminded that, in 2005 parliamentary elections only 2 political structures (New Azerbaijan Party and Azadliq bloc) got more than 3% of votes (approximately 59000 valid votes), whereas in 2010 only one political party got more than 3% of votes (approximately 73000 valid votes) – New Azerbaijan Party. As one can see, suggestion on the minimum level for state funding of political parties, i.e. clause on getting at least 3% of valid votes in the parliamentary elections does not reflect existing political realities and cannot be considered fair.

The draft proposal prohibits donations, which are given to political parties with a purpose of gaining economic and political benefits. As a result, obstacles can emerge for political parties, which are not financed by the state budget, to get financed by donations. According to new amendment personal donations cannot be given for the purpose of political benefits. Whereas in reality, political parties traditionally rely on social groups for political benefits and try to get confidence of one or many social groups, including financial support.

The provision, which causes concern, is making the donation givers subject to severe rules. For example, according to the draft law, physical and legal entity giving donations cannot be anonymous and should present citizen information (for physical bodies); tax and bank information (for legal entities). EMDS considers that, anonymous donations of physical bodies cannot be prohibited and that, rules on charity can be valid for financing of political parties as well.

In the draft proposal it is mentioned that, a donation shall be done through transfer to a bank account of a political party. This provision is a huge obstacle for operation of an unregistered political party. Unregistered political party cannot open a bank account, since it does not have a status of legal entity and thus, if party is not registered, it cannot get donations for a long time.

III. Suggestions

EMDS appreciates the initiative of the Presidential Administration of the Republic of Azerbaijan on amendments and changes to the law on political parties and considers important to continue attempts toward improving this law in accordance with the Council of Europe standards. With respect to this, EMDS proposes the following to the draft amendments and changes in order to adjust it to the existing political situation:

- ❖ Provisions on establishment and registration of political parties shall be simplified, provisions restricting freedom of association of citizens in political parties shall be removed;
- ❖ Provisions restricting activity of political parties, especially the cases defined as interference in operation of state bodies shall be more concrete and clear. The draft law shall propose broad opportunities for participation of political parties in the political life of society and state, instead of legal restrictions;
- ❖ Criteria for financing of parties from the state budget shall be changed, real results concerned with participation of political parties in elections during past years – registration of candidates throughout the country and threshold less than 3% of valid votes shall be taken as an indicator.
- ❖ Provisions on volunteer donations to political parties by citizens and legal entities shall be simplified;
- ❖ Provision on freezing of the activity of a political party upon appeal of a relevant executive structure without decision of a court shall be removed from the draft;
- ❖ The Public TV (ITV) shall provide political parties, which are visible for a number of registered candidates, amount of votes and representation in the parliament, with free airtime;
- ❖ Provision on interference of representatives of local executive structures to activity of political parties being unacceptable and sanctions concerned with these cases shall be added to the law;
- ❖ Relevant rules and places shall be defined by the state for providing political parties with offices

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