

OPINION

by Election Monitoring and Democracy Studies Center

on some restrictive provisions of the new draft law ‘On Political Parties’.

Election Monitoring and Democracy Studies Center assessed the draft law on ‘Political Parties’ put forward by the Parliament of Azerbaijan and identified a significant number of restrictive clauses in the document in the light of relevant opinion and recommendations put forward by the European Commission for Democracy through Law (Venice Commission) and Office of Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE ODIHR) on laws regulating political parties.

EMDS states the necessity of improving the existing law ‘on Political Parties’ on the basis of standards of the Council of Europe and OSCE ODIHR and reminds that the currently suggested draft law has been prepared without taking into account the guidelines and recommendations set out by the Venice Commission and OSCE ODIHR on regulating political parties in member countries. EMDS also notes that, the current draft law fails to reflect the recommendations set out in the guideline document published by Venice Commission and OSCE ODIHR dating 2020¹ and previous opinions of the Venice Commission to Azerbaijan on draft law and amendments to draft law on political parties dating 2004² and 2011.³

EMDS categorized some restrictive provisions of the draft law under 3 groups;

- 1) Establishing political parties;
- 2) Refusals to registration, prohibition and dissolution of political parties
- 3) Internal governance and activities of political parties

According to the Article 5.1, political parties must be established by 200 citizen (founders) who are citizens of Azerbaijani Republic with full legal capacity and lived in Azerbaijan for last 20 years permanently.

The Venice Commission considers it necessary for any requirement in the way of establishing political parties to be ‘necessary in democratic society’ and ‘proportional to the objective sought’. It also calls for all kind of requirements to be minimum and simple, not burdensome and restrictive, just like any other association.⁴ Thus, it is not clear how demanding 200 founders to have been living in Azerbaijan permanently for last 20 years falls under these categories.

¹ European Commission for Democracy through Law (Venice Commission) and Office of Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE ODIHR), ‘Guidelines on Political Party Regulation, Second edition’, (December 2022), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)032-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)032-e), Guidelines; Parliament of the Republic of Azerbaijan, ‘Draft Law on Political Parties’, (September 2022), [available only in Azerbaijani language]

² Venice Commission, ‘Opinion on the Law on Political Parties of the Republic of Azerbaijan’, (June 2004), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)025-e), Opinion 2004

³ Venice Commission, ‘Draft Opinion on the Draft Law on Amendments to the Law on Political Parties of the Republic of Azerbaijan’, (December 2011), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2011\)103-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2011)103-e), Opinion 2011

⁴ Venice Commission, ‘Compilation of Venice Commission Opinions and Reports Concerning Political Parties’, (October 2021), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2021\)016rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2021)016rev-e), Compilation

Another provision of the draft law (Article 6.1) demands the political parties to have at least 10000 members to be registered in public domain.

The Venice Commission has long mentioned that the requirement of minimum number of the members is not a matter of necessity in democratic society and such kind of restriction should aim for as low threshold as possible and should be applied in reasonable manner.⁵

For instance, currently the threshold is 1000 members in Azerbaijan. The Venice Commission found such threshold reasonable before, however, stated that the suggestion of raising it 5 times in 2011 can not be considered reasonable for a country like Azerbaijan with just almost 8 million of population.⁶ Considering that the population growth in Azerbaijan in between 2011 and 2022 has been around just 25 percent, the current suggestion of raising the bar of minimum members 10 times (10000) does not sound reasonable.

In the new draft law, it is envisaged to submit information about subsequent changes in the register of political party members twice a year (until January 15 and July 15) to the body (institution) determined by the relevant executive authority (Article 6.4). In another provision, it is noted that 'the state reviews the information in the register of political party members at least twice a year using electronic information resources' (Article 7.2.2).

In its opinions regarding such rules, the Venice Commission states bureaucratic interventions in the activities of political parties should be minimal, and possible interventions should have legitimate necessity for a democratic society.⁷ The Commission states, referring to Article 11 of the European Convention on Human Rights, that the exercise of freedom of peaceful assembly and association can be restricted only 'in the interests of national security or public safety in a democratic society, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others.' The commission notes that the request of the personal information of each member of the political party by the state authorities may have a negative impact on participation in political life.⁸ For this reason, such a process can be carried out by an independent body, not executive authorities.

In its turn, the European Court of Human Rights believes that if the purpose of bureaucratic intervention in the activities of political parties is to measure whether that party has real support in society, the most perfect way to do this are the elections.⁹

EMDS believes that the provisions in the draft law regarding refusal to registration, prohibition and dissolution of political party may limit the freedom of association of citizens who want to engage in political activity.

For example, the draft proposes that a political party is dissolved if it does not participate in two consecutive Parliamentary, Presidential or local elections in a row (in the form of direct participation in the elections of a registered candidate) (Article 9.3.4.)

However, the Venice Commission states in its documents that the termination or dissolution of a political party weakens democratic governance and should be resorted to only in exceptional cases when it is necessary in a democratic society. ***The legitimate grounds for the termination, annulment and refusal of registration for political party can only be exceptional cases for instance when political party advocates for violence, forcible seizure of power, terrorism or***

⁵ Compilation (n4), 19

⁶ Opinion 2011 (n3) para 16

⁷ Compilation (n4), 22

⁸ Compilation (n4), 22

⁹ Compilation (n4), 22

armed conflict.¹⁰ In the legislation, such cases should be specified in a specific and precise form.¹¹ In other cases, including violations of administrative-bureaucratic rules or criteria such as the degree of activity in elections, the dissolution, termination of activity or refusal of registration of the party is not considered a necessary and legitimate step in a democratic society and is in conflict with fundamental human rights.¹²

*According to another provision proposed to the law, if the political party does not address the violations determined by the body (institution) determined by the relevant executive power body in accordance with **Articles 7.3.3 and 7.4** of this Law and does not inform about it within the period specified in the warning, its activity will be suspended. It can be suspended for a period of 1 year by the decision of the appellate court based on the claim of the body (institution) determined by the executive authority (**Article 8.3.**)*

Regarding such cases, the Venice Commission states that even if the right to appeal to the court is ensured later on regarding the refusal of registration, it is desirable that the decision on registration be made by an institution independent of political power. Because the person who will make the decision in the executive power institution is, in most cases, a politician representing the rival political party, which may be a cause for conflict of interest.¹³

EMDS believes that one of the restrictive conditions proposed in the draft law is the obligation to apply for the registration of political parties. For example, **Article 4.7** states that it is not allowed for a political party to operate without state registration.

Another limiting clause states:

Article 4.13. *During the period when the activity of a political party is suspended or in the event that its liquidation is registered with the state, its operation in any form (except for the actions specified in Article 8.2 and the first sentence of Article 8.6 of this Law), including the political activities of party bodies (structural bodies) and members it is forbidden to speak or act on behalf of the party, hold meetings, conduct financial transactions, or participate in the illegal organization or work of its activities. It is prohibited to take any actions related to the activity of the political party, including making decisions or signing documents, by the bodies (structural bodies) of the political party whose term of office has expired.*

The Venice Commission states that the legislation should not prohibit the existence of a political party as an institution, even in the case of dissolution and termination of a political party. ***In such cases, although the political party is legitimately deprived of some privileges at the state level, its existence and activity must be protected within the framework of human rights, as the political party is a form of association established by people under the freedom of peaceful assembly and association.***¹⁴

EMDS considers the provisions in the draft law that encourages future unjustified state intervention and abuse in the internal management forms of political parties to be inadmissible.

¹⁰ Compilation (n4), 61

¹¹ Compilation (n4), 61-2

¹² Venice Commission, 'Guidelines on Prohibition and Dissolution of the Political Parties and Analogous Measures', (December 1999), para 10,

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(2000\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2000)001-e)

¹³ Compilation (n4), 18; Guidelines (n1) paras. 85-88; Opinion 2011 (n1) paras. 35-6

¹⁴ Guidelines (n1), para 101

For example, **articles 15.5 and 16.5** of the draft are clear interferences in the internal activities of political parties:

Article 15.5. *Only a member of the party who has been permanently living in the territory of the Republic of Azerbaijan for the last 20 years can be represented in the leadership of the executive body of the political party.*

Article 16.5. *The chairman and deputy chairman of the political party can be elected only from among the members of the party who have been permanently living in the territory of the Republic of Azerbaijan for the last 20 years.*

Regarding such rules, the Venice Commission states that the internal management rules of political parties, including the organization of internal elections, should be free from state control as much as possible. Interference with these freedoms should be minimal and necessary in a democratic society. Legitimate prohibitions in the organization of internal elections can only be about money spent within the campaign and its declaration.¹⁵

The EMDS considers the following provision proposed in the project to be an unreasonable interference with the right of citizens to associate:

Article 20.7. *The chairmen of trade unions or their deputies cannot be simultaneously represented in the body of a political party as well.*

According to the principles envisaged by the Council of Europe and the OSCE, everyone's right to join a political party is protected under his freedom of peaceful assembly and association and freedom of expression. However, even though the Venice Commission considers the restrictions on the representation of some persons, including military personnel, special category civil servants and policemen in political parties as legitimate, it does not include the chairpersons and deputies of trade unions to this category of people.¹⁶

At the same time, the Venice Commission considers the bans on foreigners and stateless persons with the right to live in the country on joining political parties and giving donations to be unjustified. The Commission notes that countries should interpret the relevant human rights in relation to this category of people as broadly as possible and in their favor. In the worst case, there should be no bans on the representation of this category of persons in political parties.¹⁷

EMDS considers the following provisions on the financing of political parties to be restrictive and undesirable for abuses of public authorities:

Article 23.2. A political party is prohibited from being financed by, including receiving donations from:

- *international organizations, foreign states and foreign legal entities*
- minors, persons whose incapacity or limited capacity have been confirmed by the court;

The Venice Commission does not consider it acceptable to explicitly prohibit foreign organizations and legal entities from donating to political parties. Thus, a foreign organization, party, or intergovernmental organization may provide financial assistance to a political party for party-building, capacity-building or training purposes.¹⁸ In such a case, a specific prohibition on the use of these category of donations and assistance in the election campaign

¹⁵ Compilation (n4), 33; Guidelines (n1), paras. 151-155, 161-3

¹⁶ Guidelines (n1), para 145-8

¹⁷ Compilation (n4), 29-30; Opinion 2011 (n3) para 12; Opinion 2004 (n2) para 3,

¹⁸ Compilation (n4), 59; Opinion 2004 (n2), para 21

is considered to be more appropriate.¹⁹ If the goal is to protect against foreign political influence and hidden donations, transparency should be ensured in the legislation and prohibitions should be made more precise.²⁰

In conclusion, EMDS states that many articles proposed in the draft law ‘On Political Parties’ will create obstacles on the way of enjoyment of freedom of peaceful assembly and association and freedom of expression, as well as the right to participate in political life, stipulated in the country's Constitution, as well as in the international documents to which the country is a party. In this regard, EMDS suggests that after the initial public hearing on the draft law, this document should be submitted to the Venice Commission to assess its compliance with the Council of Europe standards.

Baku, Azerbaijan

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¹⁹ Compilation (n4), 59; Opinion 2004 (n2), para 21

²⁰ Compilation (n4), 59; Opinion 2004 (n2), para 21