

Election Monitoring and Democracy Studies Center



FINAL REPORT

**The Results of Monitoring of the Referendum on Amendments
(Additions and Changes) to the Constitution of the Republic of Azerbaijan
held on March 18, 2009**

Baku – May, 2009

CONTENTS

I. SUMMARY	3
II. INTRODUCTION	4
III. PRE-REFERENDUM POLITICAL ENVIRONMENT	5
a) Political processes	5
b) The process of determining the Referendum	6
c) Situation in the field of human rights and civil society	7
d) Local and international discussions on the Referendum Act	8
IV. LEGAL ENVIRONMENT	9
a) Election system	9
b) Initiatives on improvement of the Election Code	9
V. WORK OF ELECTION COMMISSIONS	10
a) Preparations for the Referendum Day and public education about the Referendum	10
b) Preparation of the Referendum documents	11
c) Update of voter lists	11
d) Complaints and petitions	12
VI. CREATION OF REFERENDUM CAMPAIGNING GROUPS	12
a) Creation of initiative groups	13
b) Process of collection of signatures	13
c) Registration of initiative groups	13
d) Information on violations of law	14
VII. REFERENDUM CAMPAIGNING	15
a) Conduct of referendum campaigning in the media	15
b) Campaigning through public meetings	17
c) External interferences, pressures and abuse of administrative resources in the referendum campaigning process	17
VIII. THE REFERENDUM DAY	19
1) Observation methodology and placement of observers	19
2) Results of the Referendum Day observation	19
a) Opening and organization of election precincts	20
b) Voting process	20
c) Counting of votes	22
d) Voter turnout	22
e) Information on violations of law	23
IX. OFFICIAL RESULTS AND POST-REFERENDUM SITUATION	25
a) Official results	25
b) Post-Referendum situation	25
c) Post-Referendum complaints	26
d) Political situation	26
X. CONCLUSIONS AND RECOMMENDATIONS	27
XI. APPENDICES	29
XII. CONTACT INFORMATION	33

I. SUMMARY

Election Monitoring and Democracy Studies Center (EMDS) is an independent, impartial, non-government organization working for holding free and fair elections, and development of civil society and democracy in Azerbaijan. EMDS believes that holding free and fair elections in Azerbaijan will contribute to the development of democratic traditions, enhancement of citizens' welfare, and protection of human rights in the country.

After the December 24, 2008 decision of the Constitutional Court of the Republic of Azerbaijan with regard to the Referendum Act on amendments (additions and changes) to the Constitution of the Republic of Azerbaijan, EMDS started implementation of its Long-term Observation which covered the process of preparations for the Referendum and the Referendum campaigning period.¹ EMDS carried out its Long-term Observation with 63 individually-registered observers in 81 election districts (constituencies) nationwide.

EMDS believes that while evaluating the results of the March 18, 2009 Referendum, it is important to take into consideration each separate stage of the Referendum, such as, the situation in the field of informing the society about the issues brought into the Referendum, the situation in the field of legislation, free participation in the Referendum, voting process, and counting of votes.

EMDS regrets that during the period of the March 18, 2009 Referendum, serious progress did not occur in the field of freedom of expression and media, freedom of peaceful assembly, improvement of the election legislation and providing opportunities for free political activity, and public-political environment was not democratic.

EMDS states that the Referendum Act on amendments (additions and changes) to the Constitution was presented to the Parliament of the Republic of Azerbaijan without studying public needs and while this document was approved at the Parliament, opinions of local civic-political organizations as well as Venice Commission of the Council of Europe were not taken into consideration; on the contrary, the document largely reflected interests of the political forces in power.

At the same time, during the Referendum period, broad public-political debates and voter education concerning the proposed amendments to the Constitution did not take place. Among the main causes of this were the shortcomings in the field of freedom of peaceful assembly and freedom of expression and media. Equally, the time allowed for referendum campaigning period (28 days) was not sufficient for public campaigning.

EMDS regrets that during both the period of preparations for the Referendum and the Referendum campaigning period, violations of law that had occurred in the previous elections – such as, abuse of administrative resources, destruction of campaigning materials, and pressures on political activists – were observed again.

On the Referendum Day, observers cooperating with EMDS generally noted high-level technical preparedness and conformity with the requirements of law in the organization of election precincts. However, in majority of the precincts where observation was conducted, serious violations of law were noted during the process of voting. These violations included multiple voting by one person, bringing groups of voters to the polling station, voting by the persons whose names were not on the voter lists, and ballot stuffing.

In 27 percent of the observed precincts, observers of EMDS noted that voting results were not accurately reflected in the final protocols. In 25 percent of the observed precincts, copies of final

¹During its Long-term Observation, EMDS prepared and published 2 Interim Reports – on February 12, 2009 and on March 16, 2009. Both documents can be obtained from EMDS at request.

protocols on voting results were not publicized in front of the polling station after counting of votes. Also, in 20.8 percent of the observed precincts, copies of final protocols were not given to observers.

EMDS states that the official information about voter turnout on the Referendum Day was artificially exaggerated and voter turnout was accompanied by such violations of law as multiple voting by one person, voting by persons whose names were not in the voter lists, and ballot stuffing.

EMDS notes that on the Referendum Day, District Election Commissions (DECs) and the Central Election Commission (CEC) did not properly respond to complaints about violations of election rights submitted by referendum campaigning groups and independent observers. Moreover, as the March 18, 2009 Referendum was held in the week of national Azerbaijani holiday – *Novruz Bayrami* – most of the DECs did not function and were not open for submission of complaints for three days after the Referendum Day. As a result, the right of voters to apply to the relevant election commissions about violation of their election rights was restricted.

EMDS considers that the decision on the March 18, 2009 Referendum Act was adopted without considering public opinion, social needs concerning the issues brought into the Referendum were not studied, and the society was not informed thoroughly about the provisions subject to the Referendum. At the same time, all stages of the Referendum process were accompanied by severe violations of law and this process cannot be considered free, fair and democratic.

In order to overcome tensions in political relations, which emerged as a result of the March 18, 2009 Referendum, EMDS considers it necessary for the political authorities to carry out serious measures for creating confidence between confronting political sides. EMDS believes that such measures should be accompanied by giving support to the legal initiatives of local and international organizations for improvement and democratization of the Election Code, as well as, putting efforts towards creating a dialogue between the state and the citizens.

II. INTRODUCTION

Election Monitoring and Democracy Studies Center (EMDS) is an impartial non-governmental organization working for holding free and fair elections, and development of civil society and democracy in Azerbaijan. EMDS was created on December 1, 2008, by the founders and members of the Election Monitoring Center (EMC), the registration of which had been annulled. It must be noted that on May 14, 2008, Khatai District Court of Baku City terminated registration of EMC on the basis of an illegal claim of the Ministry of Justice of the Republic of Azerbaijan.

During 2001-2008, founders and members of EMDS participated in election observation programs concerning a Referendum and presidential, municipal and parliamentary elections, including repeat- and by-elections to the Parliament. Besides, within observation missions of the European Network of Election Monitoring Organizations (ENEMO) and OSCE's Office of Democratic Institutions and Human Rights (OSCE/ODIHR), members of EMDS observed presidential and parliamentary elections and referenda held in Albania, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Turkey and Ukraine.

After the December 24, 2008 decision of the Constitutional Court of the Republic of Azerbaijan with regard to the Referendum Act on amendments (additions and changes) to the Constitution of the Republic of Azerbaijan, EMDS started implementation of its Long-term Observation of the process of preparations for the Referendum and the Referendum campaigning period. EMDS carried out its Long-term Observation with 63 individually-registered observers in 81 out of 125 election districts (constituencies) nationwide. Long-term Observation was conducted from December 2008 to March 17, 2009. EMDS prepared and published 2 Interim Reports on the results of its observation carried out during this period.²

² These reports can be obtained from EMDS.

For the purpose of voter education concerning the amendments proposed to the Constitution in this Referendum, EMDS organized Civic Forums in 6 regions of the country. In these Forums, EMDS provided voters with legal-technical education about the Referendum Act on amendments to the Constitution.

With regard to the preparations for monitoring on the Referendum Day, EMDS extended legal-technical assistance to 1148 individuals and helped them to get accredited at the Central and District Election Commissions as election observers. EMDS organized 54 trainings countrywide for the accredited election observers and 863 of them acted as short-term observers on the Referendum Day. More than 600 observers were accredited individually by the CEC and others, also individually, by the relevant DEC's (Articles 40.4 and 40.5 of the Election Code).

EMDS conducted trainings for 1148 Azerbaijani citizens for preparing them to observe the Referendum in 531 election precincts. On the Referendum Day, 983 of the trained individuals observed the Referendum in 511 election precincts located in 116 election districts (constituencies). Observers were given the necessary information about the rules of the Referendum Day, functions of the observers, and impartial observation. They were also provided with Guidebook on Referendum Day Rules, Manual on the Rules of Observation and observation forms and instructions. After the Referendum Day, the information given by the observers was verified by comparing it with the Observation Forms and Acts on Violations of Law, submitted by them, as well as, the protocols of election precincts on voting results.

In this Report, the experts of EMDS analyzed all stages of the Referendum Day – organization and opening of election precincts, voting, counting of votes, and voter turnout – on the basis of 493 Observation Forms, 705 Acts on Violations of Law and 305 Final Protocols of election precincts received from 471 randomly-chosen precincts in 116 election constituencies (some observation documents were not used because of being incomplete).

With regard to the March 18, 2009 Referendum, EMDS conducted pre-Referendum and Referendum Day monitoring with its 8 members of the Working Group, 7 regional representatives, 63 election district coordinators, and 863 observers.

EMDS' programs on preparation of observers and voter education with regard to the March 18, 2009 Referendum were implemented in an environment of cooperation with other NGOs and civic groups operating in the country, and with the financial-technical support of OSCE's Baku Office, Embassy of the United Kingdom in Baku, the National Endowment for Democracy (NED) and the US National Democratic Institute (NDI).

III. PRE-REFERENDUM POLITICAL ENVIRONMENT

On the eve of the March 18, 2009 Referendum, the political environment in the country was accompanied with a political crisis that had been deepening after the elections held in the country during recent years, especially, after the 2005 Parliamentary Elections. As the Referendum Act was introduced in the period of ongoing debates about the results of the October 15, 2008 Presidential Election, the proposed amendments to the Constitution gave an impetus to aggravation of political relations. Equally, on the eve of the Referendum, serious steps were not taken towards overcoming the existing deficiencies in the field of human rights and democratization, such as, freedom of expression and media, as well as, freedom of peaceful assembly.

a) Political processes

The date of the March 18, 2009 Referendum was determined 2 months after the last Presidential Election. It should be noted that according to the opinion of local and international observation missions which observed the October 15, 2008 Presidential Election in Azerbaijan, this Election was

not held in free, democratic and competitive environment.³ For example, a few months before the October 15, 2008 Presidential Election, opposition “Azadliq” (Liberty) bloc of political parties (composed of the Liberal Party, Popular Front Party, and Citizen and Development Party) declared that they would not participate in the Election. At the same time, considering undemocratic the last amendments to the Election Code and the Law on Peaceful Assembly, such opposition parties as *Musavat* (Equality) Party, Party of National Independence and Democratic Party, as well as, Eldar Namazov, leader of the Public Forum for the Sake of Azerbaijan, refused to participate in the last Presidential Election. EMDS’ monitoring of all stages of the Presidential Election, including the election campaigning period and voting results on the Election Day, showed that this Election was held in an uncompetitive and “no-alternative” environment and did not reflect true will of the Azerbaijani people.

After the October 15, 2008 Presidential Election, the authorities did not take serious steps for alleviating tense relations with opposing political forces, which aggravated during the election period, and creating citizen-state dialogue in the country. At the same time, it did not show strong political will towards considering recommendations of prominent local and international organizations for overcoming deficiencies in the election system, concerning formation of election commissions on the basis of equal representation of political parties, submission of complaints about the decisions violating election rights and others. Thus, without making any attempts for overcoming the lack of confidence in the fairness of the election system, which increased in recent years, and conducting broad public debates for improvement of the national election legislation, New Azerbaijan Party, the party in power, presented to the society its proposal on the Referendum Act on amendments to the Constitution of the Republic of Azerbaijan.

b) The process of determining the Referendum

On December 16, 2008, New Azerbaijan Party (*YAP – Yeni Azərbaycan Partiyası*) submitted its draft proposal on the Referendum Act on “Amendments (additions and changes) to the Constitution of the Republic of Azerbaijan” to *Milli Majlis* (Parliament). On December 18, 2008, the proposal was discussed in a joint sitting of two permanent commissions of the Parliament – Commission on Legal Policy and State-Building and Commission on Human Rights. On the same day, it was brought for voting in the Parliament and sent to the Constitutional Court for approval. In its plenary session held on December 24, 2008, the Constitutional Court made a positive judgment regarding the draft proposal on the Referendum Act on “Amendments to the Constitution of the Republic of Azerbaijan”. After official announcement of the Constitutional Court’s judgment, on December 26, 2008, the Parliament set the date of the Referendum for March 18, 2009.

It should be noted that although the draft Referendum Act proposed by YAP envisaged serious changes concerning legal-political system of the country, broad public debates were not held and public opinion was not extensively studied before presenting it to the Parliament. At the same time, public necessity for the proposed Referendum Act was not substantiated and the need for this document was not clearly explained to the society. Moreover, any political program about such a proposal was not put forward by any candidate of YAP either in 2005 Parliamentary or in 2008 Presidential elections. So, this initiative of YAP about amendments to the Constitution was presented to the Parliament unexpectedly and without studying public opinion and obtaining public confidence. Prominent NGOs and political parties noted that majority of the proposed amendments to the Constitution were of technical nature and some of these provisions would restrict human rights and liberties in the country. The most widely discussed issue, among all others, was the proposed amendment on lifting article 101.5. of the Constitution. According to this provision, “*nobody can be elected President of the Republic of Azerbaijan for more than two office terms*”. However, the proposed amendments envisaged lifting this article and instead, introducing the following provision: “*When conduct of military operations in the condition of war make it impossible to hold elections*

³ Opinions of EMDS and OSCE/ODIHR on the October 15, 2008 Presidential Election are presented in their final reports, which can be found in the following links, respectively: <http://electiondog.net/doc.php?lang=eng&docid=3683> and http://www.osce.org/odihr-elections/item_12_32818.html

for Presidency of the Republic of Azerbaijan, office term of the President of the Republic of Azerbaijan shall be extended until the end of the military operations. This decision shall be made by the Constitutional Court of the Republic of Azerbaijan upon the request of the state body which is responsible for holding elections (referenda)”.

c) Situation in the field of human rights and civil society

On the eve of the Referendum, efforts made for getting released persons that are considered as political prisoners by local human rights organizations – including Chairman of *Yeni Fikir* (New Idea) Youth Movement Ruslan Bashirli, former ministers Farhad Aliyev and Ali Insanov, Chief Editor of “Gundelik Azərbaycan” (Daily Azerbaijan) newspaper Eynulla Fatullayev, Chief Editor of “Azadliq” (Freedom) newspaper Ganimat Zahidov and satirical writer of the same newspaper Mirza Sakit (Zahidov) – gave no results.

On March 17, 2009, upon a legislative initiative of MP Mehriban Aliyeva, President of Heydar Aliyev Foundation, the Parliament passed an amnesty act on the occasion of *Novruz* Holiday, which covered 9 thousand prisoners. Unfortunately, except Mirza Sakit, the act did not apply to any other political prisoner. It’s worth noting that taking into consideration existence of the problem of political prisoners in Azerbaijan, on March 25, 2009, Parliamentary Assembly of the Council of Europe (PACE) appointed German MP Christoph Strasser the Assembly’s reporter on political prisoners in Azerbaijan.

On the eve of the Referendum, Minister of Internal Affairs Ramil Usubov sued Leyla Yunus, prominent rights activist and Director of Peace and Democracy Institute, to the court. R.Usubov claimed that L.Yunus slandered the Ministry of Internal Affairs and “**damaged professional reputation of the police**” in her December 3, 2008 interview to “day.az” internet portal. The Minister demanded L.Yunus to issue a refutation concerning the mentioned interview, beg pardon from the Ministry, and pay a moral compensation in the amount of 100 thousand manat. Court proceeding on this case was held on March 2, 2009. R.Usubov withdrew his court claim and reconciliation between the sides was declared.

On the eve of the Referendum – from January 1, 2009, broadcast of foreign radio stations (Radio Liberty, Voice of America, and BBC) in Azerbaijani national frequencies was banned.

On February 20, 2009, while preparing a media report on the process of preparations for the Referendum in Nakhchivan, Idrak Abbasov, employee of the Institute of Reporters’ Freedom and Security (RATI), was summoned to the Ministry of National Security of Nakhchivan Autonomous Republic. I.Abbasov told that in the Ministry, he was subjected to psychological pressures, asked about his contacts in Nakhchivan, and demanded to leave Nakhchivan Autonomous Republic. As a result of these pressures, his health condition worsened and after returning from Nakhchivan to Baku, he was hospitalized in the Cardiology Department of the Republic Clinical Hospital.

On March 6, 2009, *Milli Majlis* (Parliament) adopted some amendments to the Law on Mass Media. According to these amendments, if educational or citizenship requirements for chief editor of a mass media institution are not met, and/or if copies of every issue of a print media are not send to the founder of that media, state archive, the National Library, Library Board, Azerbaijan Press Council as well as libraries of the state bodies, that media organization can be closed down for 2 months. Besides creating restrictions on operation of mass media institutions, these amendments can also be considered a harsh violation of the freedom of expression.

On January 9 and 21, 2009, youth organization of Musavat Party attempted to stage peaceful protest actions against the decision of the government on banning broadcast of foreign radio stations in Azerbaijani national frequencies. In both cases, the police did not allow them to hold their protest action and dispersed them. In the protest acts, 9 persons were detained and taken to the police department. They were released after giving written explanation to the police.

To express its protest against “Sahar” TV channel of the Islamic Republic of Iran, which broadcast information against the statehood of the Republic of Azerbaijan and insulted Azerbaijani

intelligentsia, youth organization of Citizens' Solidarity Party applied to Baku City Executive Authority to get permission to hold a picket in front of the Iranian Embassy in Baku on February 17. However, Baku City Executive Authority declined their request and recommended the Party to "express their position in a civil way".

d) Local and international discussions on the Referendum Act

After official announcement of the Referendum, several local and international organizations expressed their position on the Referendum Act on amendments to the Constitution.

On December 25, 2008, EMDS publicized its opinion on the draft Referendum Act, in which it noted that most of the proposed amendments were of technical nature and there was no need for holding a referendum to adopt technical changes. In its opinion, EMDS also stated that a number of the proposed legal-political amendments did not serve the purpose of constitutional reform or improvement. EMDS considered some of the amendments, especially, the amendment about lifting the provision on banning one person's election to presidency for more than twice, as a step backward from democratic development.

EMDS also noted that the provision on banning one person's election to presidency for more than twice served as an important legal obstacle in the Constitution of the Republic of Azerbaijan for preventing the central executive power from becoming an absolute political authority. Therefore, if this provision was lifted from the Constitution, the opportunities of the citizens to choose between alternative political forces would be limited, political forces in the country would be concentrated around on person and lead to the creation of a political hegemony. Lifting of this article would weaken the belief in holding free and fair elections, create unequal conditions for competition in the elections and increase passivity of the citizens in the electoral processes.

On January 29, 2009, discussions concerning the Referendum were held in the Monitoring Committee of PACE and the Committee requested Venice Commission of the Council of Europe to give its opinion on the draft Referendum Act on Amendments to the Constitution of the Republic of Azerbaijan.

On March 2, 2009, the Congress of Local and Regional Authorities of the Council of Europe issued a statement concerning the Referendum. In the statement the government of Azerbaijan is requested to postpone the Referendum on Constitutional amendments until Venice Commission gives its opinion on conformity of those amendments with European democratic norms, especially, with the European Charter on Local Self-Government.

On March 17, 2009, Venice Commission publicized its opinion on the changes and additions proposed to the Constitution of Azerbaijan.⁴ It is stated in the opinion that ***the proposed changes and additions generally do not have the spirit of reform. Therefore, it is difficult to understand the purpose of, need for and relations between some of the changes. Additions to the Constitution could be promulgated in the form of law.*** In its opinion, Venice Commission also noted that some of the amendments considerably change the principle of separation of power and the proposal on lifting the provision about restriction on election to presidency specifically creates confusion. ***In the amendment brought into the Referendum, the provision, annulment of which is proposed, is not shown and it simply presents the new version of this article to the attention of the voter. However, the annulled and added provisions talk about two completely different notions. The basis of the rule of law is the separation of power. In the countries with the presidential form of government, executive power belongs to the President and legislative and judiciary power branches are relatively weak. Therefore, regular change of the regime through elections is a way of preventing too strong executive power concentrated in President's hand.***

⁴ This opinion can be obtained from: http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&OID=518

In the public-political debates on draft Referendum Act, amendments proposed to the Constitution were discussed with anxiety. For example, the Referendum Act included an amendment to the Constitution which envisaged extension of office term of the Parliament and President for an indefinite period of time in condition of war and military operations. However, the definition of “**condition of war**” is not made clear in this amendment. So, this amendment may be used in the future to extend office term of the Parliament and President for an indefinite period on the basis of existence of war condition.

Draft Referendum Act also proposed the following amendment to Article 32.3 of the Constitution: “Except the cases established by law, nobody can be subject to surveillance, video recording, taking photo, audio recording and other such actions without his/her knowledge or despite his/her objection”. As the content of this provision is very general and vague, in the future it can be interpreted in many different ways. Inclusion of this norm in the Constitution can become a major obstacle on the professional activity of media representatives. Therefore, this provision is contrary to the freedom of expression and media, which is considered as one of the main attributes of a democratic society.

IV. LEGAL ENVIRONMENT

a) Election system

Azerbaijan is a presidential republic where the power is separated between three branches – President (executive), Milli Majlis (Parliament-legislative), and Court System (Judiciary). President, Parliament and Municipalities (local government bodies) are elected every 5 years.

In the Republic of Azerbaijan, elections and referenda are carried out by the Central, District and Precinct election commissions. 1/3 of the members of the election commissions represent majority party in the Parliament, 1/3 represent independent members of the Parliament and the remaining 1/3 represent parties that are in minority in the Parliament. One of 2 commission members representing independent MPs is appointed by agreement with the majority party, the other one – with the minority parties in the Parliament.

Constitution of the Republic of Azerbaijan and Election Code of the Republic of Azerbaijan regulate the rules on holding referendum in the territory of the country. The following issues and be done *only through referendum*:

1. Adoption of the Constitution of the Republic of Azerbaijan and amendments to it
2. Changing state borders of the Republic of Azerbaijan

If a draft referendum act on amendments to the Constitution is proposed by Milli Majlis or President of the Republic of Azerbaijan, then judgment (opinion) of the Constitutional Court of the Republic of Azerbaijan shall be obtained. Only after obtaining positive judgment from the Constitutional Court about the draft referendum act, the decision on holding a referendum on proposed issues is made.

In the Republic of Azerbaijan, elections are held in the election precincts covered by 125 election districts (constituencies) existing in the country. At the time of March 18, 2009 Referendum, 5367 election precincts functioned in the country.

b) Initiatives on improvement of the Election Code

Beginning from 2003, Venice Commission of the Council of Europe and OSCE/ODIHR, as well as, civil and political organizations functioning in the country have repeatedly put forward their recommendations for improvement of the Election Code and its adaptation to the international standards for holding free elections. However, when the Election Code was adopted in 2003 and while making amendments to it in the following periods, proposals of many local and international organizations regarding composition of election commissions, submission of petitions on violation of election rights, lifting of limitations on local observation, and Election Day rules were not considered.

Last amendments to the Election Code were adopted by Milli Majlis on June 2, 2008 and December 16, 2008. Although some positive provisions, which are of technical nature, are envisaged in these amendments, there are also certain provisions that create concern and restrict participation in the election process. For example, Law on “Additions and Changes [Amendments] to the Election Code” adopted by Milli Majlis on June 2, 2008 envisages shortening the period of election campaigning, broadening the spectrum of issues concerning obligations of citizens of Azerbaijan Republic with passive election right before foreign states, banning election campaigning on state TV (*AzTV*) and complicating rules on considering election complaints.

Law on “Additions and Changes to the Election Code” passed on December 16, 2008 stipulates that relevant election commissions can submit their complaints about violation of law by candidates or referendum campaigning groups not only to the court but also to law-enforcement bodies. According to this law, if a candidate or referendum campaigning group violates the rules of campaigning, the relevant election commission can apply directly to the court without warning the respective candidate, political party, bloc of political parties or referendum campaigning group.

V. WORK OF ELECTION COMMISSIONS

a) Preparations for the Referendum Day and public education about the Referendum

In connection with preparations for the March 18, 2009 Referendum, the Central Election Commission (CEC) implemented its functions and approved the necessary documents within the period established by law. The CEC also ensured registration of authorized representatives and advocates of referendum campaigning groups, as well as, members with the right of consultative vote.

Differently from the last Presidential Election, during the Referendum period the CEC did not consider applications of local observers for accreditation within the time limit established by law. For example, 27 local observers cooperating with EMDS submitted their applications to the CEC on January 18, 2009. However, while according to the law, they should have been issued their observer cards within 3 days, they received their cards on February 3, 2009 (after 16 days). The fact that the CEC did not consider applications for accreditation within the period established by law created difficulties concerning observation of the process of creation of referendum campaigning groups.

EMDS’ monitoring of attendance of commission members carried out in 81 election districts in the country shows that as it was the case in the last Presidential Election, serious improvements did not occur in the activity of District and Precinct Election Commissions in this field. According to the observations, a number of District and Precinct Election Commissions did not generally operate on regular working days.

During the observation of election precincts it was noted that members of several Precinct Election Commissions (PECs) were not in their offices during working hours and thus, violated the law⁵.

In this stage, in accordance with the Law on Freedom of Peaceful Assembly, the CEC approved a list of open-air and covered places for holding meetings with voters during the referendum campaigning period.

In line with the law, the CEC prepared and distributed to all election commissions booklets on the proposed Referendum Act and its comparison with the Constitution. However, some of the materials published by the CEC with the purpose of voter education about the Referendum were of the referendum campaigning nature. For example, posters published by the CEC used such messages as “All vote”, “You vote too”, “Use your active voter right” and “Let’s actively participate in the Referendum”, which were aimed at increasing voter turnout. Here it is worth recalling that according to the Election Code, for a Referendum to be considered valid, at least 25 percent of the voters in the country should participate in voting.⁶ Besides negatively affecting voters’ right of passive

⁵ Articles 33.1 and 38.1 of the Election Code and Article 179.1 of the Labor Code.

⁶ Article 139.1 of the Election Code.

participation in the Referendum, such messages constitute a violation of the established rules of participation in the referendum campaigning.⁷

Public enlightenment about the Referendum through TV, radio and print media was not carried out at a proper level. Although the date of the Referendum was determined on December 26, 2008, video-materials on the Referendum prepared by the CEC were broadcast only few days before the Referendum Day.

Local NGOs organized few public discussions on the Referendum in Baku and other big cities of the country.

b) Preparation of the Referendum documents

The CEC approved a number of instructions with regard to the preparations for the March 18, 2009 Referendum.

The CEC's Instruction "on Formation of Referendum Initiative Groups for the Purpose of Creating Referendum Campaigning Groups"⁸, dated December 30, 2008, contradicts some provisions of the Election Code. For example, the Instruction says that in order to create a referendum campaigning groups, firstly, a referendum initiative group should be formed. According to the Instruction, every citizen (or citizens) who possess election rights can form a referendum initiative group, composed of at least 50 voters, for creating a referendum campaigning group. However, in the Election Code, there is no such term as "referendum initiative group"; the Code uses only the term "initiators of creating referendum campaigning group". Thus, the CEC's Instruction created restrictions for the citizens who intended to create a referendum campaigning group and hindered opportunities for the voters to participate in the Referendum.

The CEC also carried out the process of printing Referendum ballot papers and distributing them to the lower election commissions. However, EMDS has noted that from technical viewpoint, ballot papers were not prepared in full conformity with the Referendum Act on Amendments to the Constitution. While the Referendum Act envisaged more than 40 amendments to 29 articles of the Constitution, in the ballot paper questions were asked not about the proposed amendments, but about the 29 articles subject to amendments. In other words, the ballot paper was designed not in accordance with the number of amendments, but in accordance with the number of articles to be amended. It is worth noting that according to the Election Code⁹, voters can vote "for" or "against" the issues brought into the Referendum by marking empty squares located on the right hand side of each question in the ballot paper.

Another issue of concern regarding the Referendum ballot paper is that it did not give any detailed information about the proposed amendments. For example, the amendment to the Article 101.5 of the Constitution proposed to replace the provision *limiting one person's election to Presidency for more than two office terms* with a new provision *extending President's office term in the condition of war and military operations*. However, no detailed information about the essence of this amendment was given in the ballot paper.

c) Update of voter lists

According to the Election Code¹⁰, for the purpose of voters' familiarization and update of the voter lists, the lists must be posted in the election precincts at least 35 days before the Voting Day (i.e., until February 11).

According to the information given by observers cooperating with EMDS, in majority of the election precincts, voter lists were publicized 35 days before the Referendum Day. At the same time, the search system in the website of "Elections" Information Center functioning within the CEC was active during this period.

⁷ 39.1 of the Code of Administrative Misdemeanors and Article 74.1 of the Election Code.

⁸ This Instruction can be found at: <http://www.cec.gov.az/az/8referendum2009/telimat/qayda31-141-1.htm>

⁹ Article 135.2 of the Election Code.

¹⁰ Article 48.1 of the Election Code.

During the monitoring of the process of updating voter lists, it was revealed that names of some voters were not included in the voter lists. For example, names of Seyidov Tural Mirtagi oglu and Seyidov Vusal Mirtagi oglu in the Election District No: 41, Jabrayilov Elnur Abid oglu in the Election District No: 44 and Muradova Sevinj Adil qizi in precinct # 20 of the Election District No: 47 were not included in the voter lists.

Observers cooperating with EMDS also noted that in some election precincts, information about voters was incorrectly entered in the voter lists. In some cases, names of deceased persons appeared in the voter lists. For example, names of deceased persons – Jafarov Raimi Ilyas oglu in precinct # 14 of Mingachevir Election District No: 47 and Agayeva Khavar Mahammad qizi in precinct # 42 of Election District No: 83 – still were included in the voter lists of their respective precincts.

d) Complaints and petitions

During the process of registration of referendum campaigning groups and the referendum campaigning period, as well as, after the Referendum, the Expert Group, functioning within the CEC, considered complaints of authorized representatives of the initiative groups “Republicans” and “Movement for Garabagh and the Republic”.¹¹

It was noted in these complaints that persons who collected signatures on behalf of the above-mentioned initiative groups, as well as, voters who gave their signatures in support of these groups were subject to pressures and in some cases, signature lists were illegally confiscated from them. However, while investigating these complaints, the Expert Group did not precisely and objectively study the cases. For example, although majority of the complaints were about the cases of pressures and intimidation with criminal nature, after investigating them, the Expert Group did not apply to the prosecutor’s office. However, according to the Election Code, if the Expert Group comes to the conclusion that a complained case constitutes criminal substance, it should file a notification, which should be sent to the relevant structures of prosecutor’s office by the CEC.¹²

During the referendum campaigning period, the Expert Group investigated a complaint of Gulaga Aslanli, representative of the referendum campaigning group “Republicans”. In his complaint, G.Asalanli stated that “Xalq” newspaper did not publish correctly the title of campaign material of the referendum campaigning group “Republicans”. Having investigated the complaint, the Expert Group concluded that the error was of technical nature and instructed the newspaper to correct it.

VI. CREATION OF REFERENDUM CAMPAIGNING GROUPS

According to the Election Code¹³, citizens of the Republic of Azerbaijan who possess active election right can create referendum campaigning groups for the purpose of campaigning “for” or “against” the issues brought into the Referendum. The number of initiators for creating a referendum campaigning group must be more than 500. If the number of initiators is more than 500 but less than 2000, for the purpose of creating a referendum campaigning group, they should apply to the election commission of the district (constituency) where majority of them reside. Having got accredited, this group can conduct campaigning only in the territory of that district. If the number of initiators is more than 2000, they can apply to the CEC for creating a referendum campaigning group. Referendum campaigning group accredited by the CEC can carry out campaigning throughout the territory of the Republic of Azerbaijan.

The process of creation of referendum campaigning groups, collection of signatures and registration lasted 45 days – from December 27, 2008 till February 11, 2009.

¹¹ Seven complaints of Gulaga Aslanli (authorized representative of the initiative group “Supporters of the Republic”), three complaints of Hasan Kerimov (authorized representative of the initiative group “Movement for Garabagh and the Republic”) and 2 joint complaints by Hasan Kerimov and Tofiq Yaqubov (authorized representative of the initiative group “Supporters of the Republic”) were considered by the Expert Group.

¹² Article 112-1.6.5 of the Election Code.

¹³ Article 61 of the Election Code.

a) Creation of initiative groups

After official announcement of the Referendum, 14 initiative groups submitted their documents to the CEC and received signature lists for creating referendum campaigning groups.

It should be noted that for the first time since the November 6, 2005 Parliamentary Elections, major opposition political organizations – Musavat, Popular Front, Liberal, Citizen and Development, Hope, Democratic, Citizens’ Solidarity, and National Union of Single Azerbaijan parties and Public Forum for the Sake of Azerbaijan – created four separate initiative groups (“Republicans”, “For the Sake of Karabakh and the Republic”, “People’s Republic of Azerbaijan” and “National Independence”) and applied to the CEC for getting registered as referendum campaigning groups. Only two of these initiative groups – “Republicans” and “For the Sake of Karabakh and the Republic” were registered as campaigning groups. Both groups campaigned against holding this Referendum.

b) Process of collection of signatures

According to the Election Code¹⁴, an initiative group intending to carry out referendum campaigning in the whole territory of the Republic of Azerbaijan must collect signatures of consent to be a member of that referendum campaigning group from at least 40 thousand voters residing in at least 60 election districts of the country.

In this Referendum, the process of collection of signatures for registration of referendum initiative groups was carried out in the entire territory of the country.

During the process of collection of signatures, observers of EMDS noted pressures against voters who were activists or supporters of opposition political parties.

c) Registration of initiative groups

From the initiative groups which returned completed signature lists to the CEC within the period established by law¹⁵, the following were registered as referendum campaigning groups: “New Azerbaijan”, “City”, “Progress”, “Law and Democracy”, “Civil Society”, “For the Sake of Sustained Development”, “Intelligence”, “the Republicans” and “For the Sake of Karabakh and the Republic”. The CEC refused to register “Prosperous Village”, “Free Word”, “National Independence” and “People’s Republic of Azerbaijan” initiative groups on the ground that they did not submit sufficient number of valid signatures. Initiative group “The World of Democratic Azerbaijan” did not submit completed signature lists to the CEC by the established deadline. Considering the CEC’s decision illegal, initiative group “People’s Republic of Azerbaijan” complained to Baku City Court of Appeals. The Court declined complaint of the initiative group. Then the initiative group submitted a petition to the Supreme Court. Having considered the case, the Supreme Court kept in force the decision of Baku City Court of Appeals.

During the Referendum period, there were 9 referendum campaigning groups which had the right to conduct campaign in the whole territory of Azerbaijan Republic (“New Azerbaijan”, “City”, “Progress”, “Law and Democracy”, “Civil Society”, “For the Sake of Sustained Development”, “Intelligence”, “Republicans”, and “For the Sake of Karabakh and the Republic”). The number of referendum campaigning groups functioning at the level of election districts in various regions of the country was 122.

During the period of preparation for the Referendum, representatives of the initiative group “For the Sake of Karabakh and the Republic” appealed to the Constitutional Court. In their appeal they stated that the decision of Milli Majlis on “Holding Referendum on Amendments to the Constitution of the Republic of Azerbaijan” was contrary to the Constitution and demanded to annul the decision on the ground that the proposed amendments violated rights and liberties of the Azerbaijani citizens protected by law. The initiative group maintained that the proposed Referendum Act violated the

¹⁴ Articles 65.2 and 65.3 of the Election Code.

¹⁵ Article 66.2 of the Election Code.

requirements of the Article 156 of the Constitution¹⁶ of the Republic of Azerbaijan and Article 31.0.2 of the Law of the Republic of Azerbaijan on Constitutional Court¹⁷. However, their appeal was not considered by the Constitutional Court.

d) Information on violations of law

During the process of collection of voter signatures for creation of referendum campaigning groups, voters who gave signatures to the initiative groups “Republicans” and For the Sake of Karabakh and the Republic”, as well as, representatives of these groups were subject to pressures by the police and members of local executive bodies.

Cases of violation of law observed in the process of collection of voter signatures for registration of referendum campaigning groups:

- On January 24, while collecting signatures for the initiative group “For the Sake of Karabakh and the Republic” in the territory of Nizami district of Baku, Ruslan Tanriverdiyev was subject to intimidation by 2 policemen, who took from him a signature list with 18 signatures.
- On January 27, Teybar Rasulov, executive representative of Varavul area of Lankaran city, and Samadaga Abdullayev, Head of Lankaran Education Department, exerted pressure against Hikmat Mammadov and Agababa Yusifov, who collected signatures for the initiative group “For the Sake of Karabakh and the Republic” and tried to take signature lists from them. They could get the signature lists from A.Yusifov, but failed to take the documents from H.Mammadov.
- On January 21, Movsum Asgarov and Rovshan Sadiqov, who collected signatures on behalf of the initiative group “For the Sake of Karabakh and the Republic” in Sabirabad district, were taken to the police department of the district. The police claimed that they found narcotics in Movsum Asgarov’s pocket. Rovshan Sadiqov was initially blamed for his business activity, but after being taken to the police department, he was charged for resisting the police. On the same day, Sabirabad District Court made a verdict on administrative arrest of M.Asgarov and R.Sadiqov for 3 and 2 days, respectively. After this, both of them were charged in accordance with Article 234.1. of the Criminal Code (illegally obtaining or keeping narcotic or psychotropic substances in the amount more than for personal use, without the purpose of selling them) and conditionally arrested for 1.5 years.
- On January 21, Ramazan Aliyev, Chairman of Musavat Party’s Khachmaz district branch, was taken to the police department. In the department, he was accused of spreading secret leaflets in the district. But R.Aliyev told the police that he was collecting signatures for creating a referendum campaigning group and showed the signature lists. After this, he was released.
- On January 27, the police went to the house of Suleyman Kerimov, Chairman of Mingachevir district branch of the Popular Front Party of Azerbaijan, and confiscated from him 750 signatures, which he collected for the initiative group “For the Sake of Karabakh and the Republic”.
- On January 22, while Aziz Pirmammadov, Chairman of Qazakh district branch of Hope Party, was collecting signatures for the initiative group “For the Sake of Karabakh and the Republic” in Kosalar village of Qazakh district, Ramiz Asadov, executive representative of the village, intimidated the voters and threatened to “punish them for participating in sabotages against the state”. The same day, leadership of Qazakh Electricity Distribution Network of Shamkir District Electricity Supply Ltd., where A.Pirmammadov worked, forced the latter to submit his resignation from work.

¹⁶ According to Article 156.1. of the Constitution of the Republic of Azerbaijan, additions to the Constitution are adopted in Milli Majlis of the Republic of Azerbaijan with 95 votes and in the form of Constitutional laws.

¹⁷ Article 31.0.2. of the Law of the Republic of Azerbaijan on Constitutional Court does not include additions to the Constitution among the cases that can cause starting of a proceeding at the Constitutional Court.

- On January 19, officers of Nizami District Police Department of Ganja city called to the department Jahangir Amirkhanli and Oqtay Zeynalov, representatives of Musavat Party who collected signatures for the initiative group “Republicans”. The police demanded J.Amirkhanli and O.Zeynalov to stop collecting signatures and threatened them that otherwise, they would get arrested.
- On January 21, Elshen Mammadov, who collected signatures for the initiative group “People’s Republic of Azerbaijan” in Aghsu district, was taken to the office of District Executive Authority. Head of the Public-Political Section of District Executive Authority Sakhavat Hasanov, Deputy Chief of District Police Department Malik Mammadov and police captain Vugar Novruzaliyev threatened him and demanded him to stop collecting signatures in connection with the Referendum.
- On January 27, Fakhraddin Abbasov, representative of Musavat Party, who collected signatures in Sumgayit city, was summoned to the City Prosecutor’s Office and questioned for 3 hours. He was demanded to give a written explanation about in which conditions he collected signatures from citizens.
- On January 21-22, while collecting signatures for the initiative group “For the Sake of Karabakh and the Republic” in Muradkhanli village of Imishli district, executive representative of the village Isabala Osmanov tried to prevent activists of the Popular Front Party and oust them from the village. I.Osmanov also told the villagers, who already gave their signatures, to send a telegram to the CEC and say that they were deceived to give their signatures. When village resident Eyvaz Asadov refused to do so, he was threatened that he would be dismissed from his work.
- On January 26, Azer Aliyev, Chairman of Beylagan District Election Commission No: 81, called to his office Mohubbet Asadov, Chairman of Hope Party’s Beylagan district branch, and asked him about which group he was collecting signatures for. The next day, Eldar Khudaverdiyev, Deputy Chairman of Beylagan District Executive Authority, also called M.Asadov to his office and demanded explanation about his activities.
- In Jalilabad district, Aliyar Quliyev and Rafiq Hajiyevev, executive representatives of Uchtepe and Tezekend villages, respectively, exerted pressures on voters who gave signatures to the initiative group “Republicans”. They threatened the villagers that if the latter gave their signatures to the opposition initiative groups, they would be deprived of the state assistance for cultivating their lands and their small business activities would be hindered.

VII. REFERENDUM CAMPAIGNING

According to the Election Code¹⁸ of the Republic of Azerbaijan, election campaigning period begins 28 days prior to the Voting Day and stops 24 hours before starting of the voting. Referendum campaigning period started on February 18, 2009 and lasted till 08:00 a.m. on March 17, 2009.

Referendum campaigning is conducted through mass media, periodical press, in-print materials, audio-visual and other campaign materials and holding public events. The Election Code also regulates rules of conducting election (referendum) campaigning on free and paid bases.

a) Conduct of referendum campaigning in the media

According to the requirements of the Election Code¹⁹, for implementation of referendum campaigning, a draw is held to allot free airtime to the initiative groups on equal basis.

On February 18, 2009, the CEC held a draw on determining free airtime for conducting referendum campaigning. In this draw, by the agreement of authorized representatives of 7 campaigning groups,

¹⁸ Article 75.2 of the Election Code.

¹⁹ Article 80.7 of the Election Code.

3 hours of free airtime per week was allocated in the Public TV-Radio company (1.5 hours on TV and 1.5 hours on radio) for referendum campaigning.

According to Article 80.5 of the Election Code, free airtime allotted in TV-radio companies for election (referendum) campaigning shall be not less than 3 hours per week. As compared to 6 hours of free airtime per week allotted to presidential candidates in the last Presidential Election, only 3 hours of free airtime per week was allocated for referendum campaigning. Thus, opportunities for conducting broad and comprehensive campaign on the Referendum were highly restricted. If we take into account the fact that the proposed Referendum Act included more than 40 amendments to the Constitution, allocation of only 3 hours of airtime per week for discussion of these amendments cannot be considered fair. Moreover, as there were 9 referendum campaigning groups, each campaigning group could get only 10 minutes of free airtime on TV per week.

As the election legislation also envisages referendum (election) campaigning on paid basis, a list media organizations which offered their services on paid basis during the referendum campaigning period was also announced. However, no social advertisement about using airtime on private TV and radio stations was made.

During the referendum campaigning period, the Institute of Reporters' Freedom and Security (IRFS) monitored eight TV channels and seven newspapers with regard to the activity of referendum campaigning groups.²⁰

IRFS' monitoring revealed that Public TV (*Ictimai*), by and large, broadcast general information about the Referendum – 4 hours. Coverage of the referendum campaigning groups in this channel was conducted on equal basis.

In *Xezer TV*, activities of “New Azerbaijan” campaigning group were mentioned most – 3 minutes 50 seconds. “Movement for Garabagh and the Republic” (36 seconds) and “Republicans” (27 seconds) are in the second and third places, respectively. Names of the other campaigning groups were not mentioned.

In *ANS TV*, although with little difference, “New Azerbaijan” campaigning group was mentioned most – 2 minutes 42 seconds. “Movement for Garabagh and the Republic”, which campaigned against the Referendum, came second – 2 minutes 12 seconds.

Lider TV, did not spare time to any campaigning group other than “New Azerbaijan” (4 minutes 19 seconds).

Azad Azerbaijan channel did not give information about activities of any campaigning group at all and gave only very little general information.

Another channel where names of campaigning groups were not mentioned at all was *Space TV*. Information about the Referendum given in this channel was very little and of general nature.

Sports-Azerbaijan TV did not give any information either about the Referendum or any particular campaigning group.

During the monitoring of the media in the campaigning period, it was also revealed that the media did not pay adequate attention to public education about the Referendum. TV channels mainly broadcast information the CEC's events and activities.

In comparison with TV channels, print media reflected broad diversity of ideas and covered a wide range of issues concerning the referendum, as well as, activities of the referendum campaigning groups. “Azerbaijan”, “Xalq” and “Respublika” newspapers published campaign materials of the campaigning groups for free.

In this period, “Yeni Azerbaijan” newspaper gave broad coverage of the “New Azerbaijan” campaigning group – 53.18%. As to the other campaigning groups, this newspaper reported about activities of only those groups which campaigned in favor of the Referendum.

“Azadliq” and “Yeni Musavat” newspapers mainly covered the groups campaigning against the Referendum, i.e. “Republicans” and “Movement for Garabagh and the Republic”. As compared to “Azadliq” newspaper, “Yeni Musavat” gave more coverage of the “New Azerbaijan” campaigning group – 5.39%.

²⁰Detailed information can be obtained from IRFS website: <http://www.irfs.az/content/view/2042/1/lang.az/>

“Zerkalo” newspaper largely covered the groups campaigning against the Referendum: “Republicans” – 33.76%, “For the Sake of Karabakh and the Republic” – 36.42%. Coverage of “New Azerbaijan” campaigning group in this newspaper was 1.38%.

b) Campaigning through public meetings

During the referendum campaigning period, campaigning groups organized public meetings with voters. The main shortcomings in the organization of such events were related with the restrictions on the freedom of peaceful assembly. Referendum campaigning groups “Republicans” and “For the Sake of Karabakh and the Republic” applied to local executive authorities in Baku city and other parts of country with a request to hold public meetings with voters in downtown areas. However, as the places allotted for them in Baku and other cities were not located in downtown areas, the above-mentioned opposition campaigning groups did not hold public activities in those places. For example, on February 20, 2009, Baku City Executive Authority declined all of the locations in Baku city requested by the referendum campaigning group “For the Sake of Karabakh and the Republic” for holding a public event and instead, recommended them to hold their meeting in Bibiheybat square, which is too far from central Baku.

c) External interferences, pressures and abuse of administrative resources in the referendum campaigning process

According to the Election Code²¹, only referendum campaigning groups, registered in accordance with the established rules, have the authority to carry out referendum campaigning. The Code also provides a list of persons who do not have the right to conduct referendum campaigning²². However, during the referendum campaigning period, observers cooperating with EMDS noted cases in which representatives of state organizations and persons who were not members of any campaigning group abused their official powers and illegally participated in this process.

For example, in their December 30, 2008 issues, “Azerbaijan”, “Respublika” and “Xalq” newspapers used the term “Presidential Administration” instead of “President’s Executive Apparatus”. It should be mentioned that the draft Referendum Act proposed to replace the term “President’s Executive Apparatus” with the term “Presidential Administration” in Article 109 of the Constitution. However, state-sponsored official newspapers started to use this term before the Referendum. This not only was illegal, but also could decrease public confidence in the results of the Referendum.

According to the Election Code²³, equal opportunities should be created for production and distribution of print, audio-visual and other campaign materials, as well as, for placement of campaign materials. The law envisages criminal responsibility for interfering in the campaigning in any form²⁴.

On January 8, 2009, a meeting of board was held at the Office of General Prosecutor of the Republic of Azerbaijan. The meeting was devoted to the discussion and explanation of the draft proposal on the Referendum Act on “Amendments to the Constitution of the Republic of Azerbaijan” and the tasks set before the structures of Prosecutor’s Office concerning the Referendum. The meeting approved the Action Plan for studying the draft proposal on the Referendum Act by the employees of the Prosecutor’s Office and its elucidation in the society. It should be noted that neither the Law on Prosecutor’s Office²⁵, nor the Election Code set any tasks before the structures of Prosecutor’s Office with regard to referendum campaigning. At the same time, this case is a violation of the requirements of Part 11 of the Election Code, which regulates functioning of referendum campaigning groups²⁶.

²¹ Article 74.1 of the Election Code.

²² Article 74.2 of the Election Code.

²³ Article 87 of the Election Code.

²⁴ Articles 39, 40 and 42 of the Code of Administrative Misdemeanors and Article 159.1 of the Criminal Code envisage criminal responsibility for interfering in the implementation of campaigning.

²⁵ See: Articles 4, 10, 11 and 12 of the Law of the Republic of Azerbaijan on Prosecutor’s Office.

²⁶ Part 11 of the Election Code of the Republic of Azerbaijan indicates that the right to conduct referendum campaigning belongs only to the referendum campaigning groups created in accordance with the established rules.

It is worth noting that 1 week before the Referendum Day, referendum campaigning groups in which opposition political parties united – “Republicans” and “Movement for Garabagh and the Republic” – addressed the voters and requested them not to participate in the Referendum. Opposition parties explained this with the lack of political conditions and little airtime for discussing the amendments brought into the Referendum and considered it impossible to hold a referendum in a democratic way under such circumstances.

Other cases of violation of law observed during the process of referendum campaigning:

- On February 28, Alikram Akbarov, Director of School No: 4 of Ganja city, held a parents’ meeting, in which he called the voters for voting in favor of the amendments to the Constitution on the Referendum Day.
- On March 4, MPs Mirkazim Suleymanov and Ahad Abiyev, together with the representatives of Jalilabad District Executive Authority, called teachers of Astanli, Sulucheshme and Zopun villages (where precincts # 19, 20 and 21 of Jalilabad Election District No: 67 are located) for voting in favor of the Referendum Act.
- On March 7, by an instruction of Irshad Aliyev, Head of the Executive Authority of Beylagan district, a meeting on the occasion of March 8 International Women Day was held in Beylagan city with the participation of women working in healthcare, educational, cultural and other state organizations of the district. In his speech at this meeting, I.Aliyev asked the participants to vote for the Referendum Act.
- On March 5, in the building of Jalilabad District Technical Service Department, a meeting concerning the Referendum was held with the participation of the campaigning groups “Republicans” and “For the Sake of Karabakh and the Republic”. The building was surrounded by the policemen and pictures of everybody who participated in the meeting were taken.
- On March 5, while sticking campaign posters in front of precincts # 6 and 7 of Nasimi First Election District No: 21 located in the building of School No: 54 of Baku city, members of the referendum campaigning group “Republicans” Yusif Suleymanli, Zakir Khalilov, Adil Abulov, Javid Hajibeyli and Elman Fattah were subject to pressures by Murad Novruzov, Head of Teaching Planning Unit of the School. M.Novruzov torn down posters of the mentioned referendum campaigning group and insulted them. Then he called students of the school for assistance and wanted to cause physical damage to the above-named persons. As a result, J.Hajibeyli’s car (Honda, state license plate # 10-ZU-953) was damaged. This incident was reported to the Police Station No: 19 of Nasimi district and a criminal case was opened in connection with this fact. Investigation of this fact is still continuing.
- On March 9, while sticking campaign posters in the territory of Surakhani Second Election District No: 31, Rovshan Demirli, member of the referendum campaigning group “Republicans”, was taken to the Police Station No: 33 of Surakhani district. Immediately after this incident, the referendum campaigning group “Republicans” appealed to the CEC. Then the police obtained written explanation from R.Demirli and released him.
- On March 11, while sticking campaign posters in precincts # 41 and 42 of Agdam Rural Election District No: 119, which are located near Nizami Cinema in Sumgayit city, Faxraddin Abbas, member of the referendum campaigning group “Republicans” was subject to pressures by a representative of Agdam City Executive Authority.
- On March 12, while spreading campaign materials of the referendum campaigning group “Republicans” at Baku State University, representative of the Youth Organization of Musavat Party Tural Abbasli and party’s activist Murad Karimov were stopped by the security service of the University and the police was called. After getting written explanation, the police released them.

- On March 12, Mustafa Hajibeyli, representative of the referendum campaigning group “Republicans”, was called to Binagadi District Police Department. At the Department, two persons in civilian clothes obtained written explanation from him. One of the se persons presented himself as inspector of Binagadi District Police Department. M.Hajibeyli was told that he was to give a written explanation about his participation in the unsanctioned protest action held in front of the Constitutional Court on December 24, 2008. However, M.Hajibeyli answered that he had already given explanation about his participation in that action to relevant structures. After a while he was released.

VIII. THE REFERENDUM DAY

1) Observation methodology and placement of observers

EMDS conducted trainings for 1148 Azerbaijani citizens for preparing them to observe the Referendum in 531 election precincts. On the Referendum Day, 983 of the trained observers observed the Referendum in 511 election precincts located in 116 election districts.

Observers were given the necessary information about the rules of the Referendum Day, functions of the observers and impartial observation. They were provided with Guidebook on Referendum Day Rules, Manual on the Rules of Observation and observation forms and instructions. At their own individual initiative, more than 600 observers were accredited by the CEC and others, by the relevant DEC (Articles 40.4 and 40.5 of the Election Code).

The observers submitted to the General Information Center their information about opening of polling stations, voting process, counting of votes, and voter participation 5 times during the Referendum Day. 16 operators working at the General Information Center entered the reports received from the observers to computer databases in accordance with a special methodology. A group of lawyers assisted observers about rules and procedures concerning voting and counting of votes on the Referendum Day.

After the Referendum Day, the information given by the observers was verified by comparing it with the Observation Forms and Acts on Violations of Law, submitted by them, as well as, with the protocols of election precincts on voting results.

The results of the Referendum Day observation are based on the reports submitted from 92% of randomly-chosen election precincts in 116 election districts (constituencies) countrywide. EMDS divided the information received from 116 election districts between 7 indicative regional observation zones. (Regional observation zones and the list of election districts included in each zone is presented in Appendix 1)

In this Report, the experts of EMDS analyzed all stages of the Referendum Day – organization and opening of election precincts, voting, counting of votes, and voter turnout – on the basis of 493 Observation Forms, 705 Acts on Violations of Law and 305 Final Protocols of election precincts received from 471 randomly-chosen precincts in 116 election districts (some observation documents were not used because of being incomplete).

2) Results of the Referendum Day observation

Although observers noted serious violations of law in some precincts on the Referendum Day, in comparison with the previous elections, such violations were not widespread. In general, a small number of problems was observed in following rules during the process of voting and counting of votes on the Referendum Day.

a) Opening and organization of election precincts

The reports of observers cooperating with EMDS show that problems were observed in a small number of election precincts at the time of opening. Majority of the observed election precincts started their work in accordance with the rules established by law. For example, 97.1% of the election precincts where EMDS conducted observation started their work from 08:00 a.m. and were provided with all necessary documents.

General situation concerning organization of election precincts:

- 98.1% of the observed election precincts were provided with invisible ink, ultra-violet lights and batteries for the lights;
- In 96.2% of the observed election precincts, empty ballot boxes were shown to all people at the polling station before starting of voting;
- In 95.6% of the observed election precincts, the number of ballot papers at the polling station and in 95.4% - the number of voters registered in the territory of the precinct were announced before starting of voting;
- In 94.7% of the observed election precincts, the number of applications for voting outside the polling station was announced before starting of voting;
- In 98.5% of the observed election precincts, voting process started at time determined by the law – 08:00 a.m.

b) Voting process

During the voting process, observers cooperating with EMDS noted less number of problems that had occurred in previous elections. For example, in majority of the observed election precincts, voters who possessed necessary documents participated in voting without any restrictions (in 91.6% of the election precincts) and voters were not allowed to vote without signing voter lists (in 89.1% of the election precincts).

Nevertheless, observers witnessed certain violations of law concerning rules of organizing the voting process. For example, in 25.2% of the observed election precincts, voters were allowed to vote without marking their fingers with invisible ink. Also, in 27.8% of the observed election precincts, voters were allowed to vote without checking their fingers with ultraviolet light.

Serious violations of law were observed in the election precincts where EMDS conducted observation on the Referendum Day and such violations included the cases which negatively affected legitimacy of the voting results.

EMDS divided these violations into the following groups in terms of their number and nature:

- **In 20.2% of the observed election precincts, persons whose names were not in the voter lists were allowed to vote.**

According to the Election Code, every voter is supposed to vote in the election precinct created in the territory where s/he is officially registered. As an exception, the voter can cancel registration in his/her precinct and showing the cancellation document, vote in another precinct.

However, as in the case of previous elections, in the March 18, 2009 Referendum this rule was not correctly implemented in some election precincts, where persons whose names were not in the voter lists (and who were not registered in the territory of the relevant precinct) were allowed to vote without showing any document about cancellation of registration in another precinct. **In 9.1% of the election precincts, the number of persons voting in this way exceeded 10.**

- **In 27.9% of the observed election precincts, multiple voting by one voter (one person's voting more than once) was noted.**

According to the law, one voter has only one vote and can participate in voting only once. However, as noted in the previous elections, in the March 18, 2009 Referendum serious violations of law concerning one person's voting more than once were observed in some precincts.

- **In 26.8% of the observed election precincts, ballot stuffing (putting bunches of forged ballots into the ballot box) was noted.**

In majority of cases, such violations of law were committed with the participation and/or under the patronage of members of precinct election commissions (PECs). This kind of violations directly affects voting results and casts doubt on voting results in the relevant election precincts. At the same time, according to the Criminal Code of Azerbaijan, such violations constitute a criminal responsibility.

- **In 22.4% of the observed election precincts, the cases of bringing groups of voters to the polling stations were observed.**

According to the Election Code, every voter should participate in the voting process voluntarily. No voter can be forced or instigated to vote. However, as it was the case in the previous elections held in Azerbaijan, in the March 18, 2009 Referendum it was observed that especially local executive authorities organized bringing of voter groups to the election precincts on the Referendum Day. According to EMDS' investigations, this process was mainly aimed at increasing voter turnout.

- **In 18.1% of the observed election precincts, voters were instigated to vote in favor of the amendments brought into the Referendum.**

Not only campaigning in an election precinct, but also putting pressure on the will of voters on the Referendum Day is prohibited by law. However, as in the case of previous elections, in the March 18, 2009 Referendum harsh violations of law were observed with regard to instigating voters to vote in favor of the amendments brought into the Referendum and thus, forcing the will of the voters and conducting illegal campaigning.

- **In 26.2% of the observed election precincts, secrecy of voting was violated.**

According to the observations, in some election precincts, voters marked ballot papers outside the polling booth and members of PECs did not follow the rules on secrecy of voting and allowed voters to mark ballot papers in an open area of the precinct.

Information received from the observers on the Referendum Day shows that bringing of voters to polling stations in groups during the voting process largely happened in Beylagan (46.7%), Ganja (41.7%) and Goychay (39.5%). Cases of multiple voting by one person were mostly observed in Beylagan (53.3%), Ganja (47.6%), Goychay (39.5%) and Jalilabad (26.6%). Ballot stuffing more commonly occurred in Beylagan (50%), Ganja (38.1%), Jalilabad (37.5%), Sumgayit (24.3%), Goychay (18.6%) and Baku (15.5%). **(Violations of law observed in the voting process are classified by Regional Observation Zones in Appendix 2)**

c) Counting of votes

On the Referendum Day, observers cooperating with EMDS did not observe serious violations of law at the starting of the process of counting of votes. For example, in 95.4% of the observed election precincts, seals of ballot boxes were checked before opening them. In 92.5% of the observed

election precincts, unused ballot papers were counted and destroyed before starting counting of votes. In 93.3% of the observed election precincts, counting of votes was held openly.

However, during counting of votes and tabulation of voting results, observers noted the same kind of violations of law that had been observed in the previous elections. For example, in 14.6% of the observed precincts, tabulation of voting results was not correctly reflected in the final protocols. In these precincts, observers determined that members of precinct election commissions made mistakes while preparing the protocols.

Moreover, in 27% of the observed election precincts, voting results shown in the final protocols of the precincts were different from the results officially announced by the CEC. Such differences are apparent both in the number of voters in the voter lists and in the number of votes “for” and “against” the constitutional articles subject to the Referendum. For example, it was found out that in precinct # 25 of Absheron Election District No: 45, precinct # 21 of Lankaran Election District No: 74 and in precinct # 33 of Agdam City Election District No: 118, the number of votes given to the constitutional articles subject to the Referendum were artificially exaggerated.

Observers also noted the following cases that restricted voters’ and observers’ right to receive information on voting results:

- (a) In 25.1% of the observed election precincts, copies of final protocols were not posted in front of the precinct;
- (b) In 20.8% of the observed election precincts, copies of final protocols were not given to the observers.

d) Voter turnout

According to the Election Code of the Republic of Azerbaijan²⁷, differently from the elections, for a referendum to be considered valid, at least 25 percent of the voters in the voter lists must participate in voting. From this viewpoint, voter turnout on the Referendum Day is important to determine whether or not the March 18, 2009 Referendum was valid.

On the Referendum Day, observers cooperating with EMDS noted the following violations of law committed by members of election commissions and representatives of local executive bodies for the purpose of artificially ensuring voter turnout:

- (a) Allowing persons whose names were not in the voter lists to vote (in 20.2% of the observed election precincts);**
- (b) Multiple voting by one person (in 27.9% of the observed election precincts);**
- (c) Ballot stuffing (in 26.8% of the observed election precincts).**

Besides, having analyzed observer reports and the CEC’s official information on voter turnout in 455 election precincts, EMDS has come to the following results:

- (a) In 289 out of 455 election precincts**, observers noted violations of law which seriously affected creation of voter turnout. In addition, while observers determined **42-50 percent** voter turnout in these precincts, the CEC’s official figures about voter turnout in them is **70 percent**.
- (b) In 166 out of 455 election precincts**, observers noted violations of law which did not seriously influence voter turnout. At the same time, whereas **27.2 percent** voter turnout was observed in these election precincts, according to the CEC’s official figures, it is **67.6 percent**.
- (c) According to the reports of Precinct Election Commissions (PECs) on voter turnout**, in various times of the Referendum Day, **1 voter spent about 1 minute** for participating in voting in approximately 63 percent of the election precincts. That means, in these election precincts, 120 voters voted during 2 hours (120 minutes). But if we consider that the Referendum ballot paper included 29 questions, it is doubtful how one person could vote within 1 minute.

²⁷ Article 139.1 of the Election Code.

It is worth noting that for the purpose of studying voter turnout, EMDS instructed its observers to calculate the number of voters who leave the polling booth and put ballot papers in the ballot box inside the election precinct.

Considering the observed significant violations of law which led to artificial creation of voter turnout, the last official figure announced by the CEC (70.8 percent) creates serious doubts. Thus, the nature of the occurred violations of law show that the official figure about the national-level voter turnout declared by the CEC was either artificially created or exaggerated with regard to many election precincts.

e) Information on violations of law

In terms of their character, the violations of law observed during the Referendum Day are traditional violations in the election system of Azerbaijan, which had been observed in the previous elections too. Such violations of law cast doubts on the official results concerning Referendum Day voting, counting of votes and voter turnout.

Observer reports on violations of law (examples):

- Vali Mehraliyev, who observed the Referendum in precinct # 68 of Jabrayil-Qubadli Election District No: 120, was ousted from the precinct. The reason for this was that he found out a draft from of completed protocol on the voting results when the precinct just opened and complained to the Chairman of PEC about it.
- Vali Aliyev, who observed the Referendum in precinct # 37 of Barda Rural Election District No: 94, was threatened by member of PEC Vaqif Abdulkirimov to get ousted from the precinct because of filing and act on multiple voting by one person.
- In precinct # 22 of Nizami First (Ganja) Election District No: 37, observer Orxan Mammadov took pictures of one person who voted several times. After this, members of PEC took over the photos from him and kept him in a locked room for two hours. O.Mammadov said that during this time, he was subjected to psychological pressures of PEC members and representatives of local executive bodies. With the intervention of other observers he was released and he got back his camera with empty memory.
- According to Nahid Ismayilov, who observed the Referendum in precinct # 17 of Sabunchu First Election District No: 26, Chairman of PEC Esmira Aliyev put a bunch of ballot papers in the ballot box.
- According to Mehebbet Hasanova, who observed the Referendum in precinct # 5 of Nizami First (Ganja) Election District No: 37, Dashdemir Aliyev, teacher of Ganja State College of Humanities, where the PEC was located, put a bunch of ballots in the ballot box.
- According to Zoya Aliyeva, who observed the Referendum in precinct # 11 of Nizami Second (Ganja) Election District No: 38, a voter named Aladdin Ahmadov received a bunch of marked ballot papers from member of PEC Antiga Bagirova and put them in the ballot box.
- According to Rasim Orujov, who observed the Referendum in precinct # 13 of Kapaz First Election District No: 39, member of PEC Nigar Abdullayeva and observer Aygun Abbasova put bunches of ballots in the ballot box.
- According to Gunel Mammadova, who observed the Referendum in precinct # 23 of Kapaz First Election District No: 39, a person named Saadat Mammadova put a bunch of ballots in the ballot box.
- According to Elshen Mirishli, who observed the Referendum in precinct # 13 of Kapaz Second Election District No: 40, a voter named Fazil Isyaev put a bunch of ballots in the ballot box.

- According to Tofiq Sadiqov, who observed the Referendum in precinct # 19 of Sumgayit Third Election District No: 43, Chairman of PEC Nizami Alirzayev put bunches of ballots in the ballot box many times.
- According to Najaf Safarli, who observed the Referendum in precinct # 14 of Sumgayit-Absheron Election District No: 44, Secretary of PEC Rashad Mammadov put a bunch of ballots in the ballot box.
- According to Tural Selimov, who observed the Referendum in precinct # 30 of Jalilabad Rural Election District No: 68, a person named Alakbar Niftiyev put a bunch of ballots in the ballot box.
- According to Tajaddin Agayev, who observed the Referendum in precinct # 15 of Masalli City Election District No: 70, member of PEC Latif Babayev put a bunch of ballots in the ballot box.
- According to Valeh Babashov, who observed the Referendum in precinct # 3 of Imishli Election District No: 79, Chairman of Imishli Municipality Farman Valiyev stood in front of the election precinct and instructed the voters. He also instructed his employees Saxavat Mehdiyev and Fuad Quliyev to put bunches of ballots in the ballot box.
- According to Fazil Mehdiyev, who observed the Referendum in precinct # 42 of Imishli-Beylagan Election District No: 80, members of PEC Asif Bashirov, Vali Jafarov and Allahverdi Jafarov put bunches of ballots in the ballot box.
- According to Sabina Rafiyeva, who observed the Referendum in precinct # 4 of Samukh-Shamkir Election District No: 102, teacher of Kolan village secondary school Sevinj Selimova put a bunch of ballots in the ballot box.
- According to Nofal Bagirov, who observed the Referendum in precinct # 6 of Tovuz Election District No: 105, members of PEC Teymur Agayev and Mobil Ayrarov put bunches of ballots in the ballot box many times.
- According to Shamsi Sadiqov, who observed the Referendum in precinct # 5 of Tovuz-Qazakh-Agstafa Election District No: 106, Firuza Sadigova put a bunch of ballots in the ballot box.
- According to Asaf Jalilov, who observed the Referendum in precinct # 9 of Agstafa Election District No: 108, Chairman of PEC Shakir Abbasov put a bunch of ballots in the ballot box.
- According to Elchin Bayramov, who observed the Referendum in precinct # 45 of Kalbajar Election District No: 123, Chairman of PEC Elbrus Mirzaliyev and Secretary of PEC Vahid Chiraqov put bunches of ballots in the ballot box.
- According to Rashad Babayev, who observed the Referendum in precinct # 4 of Shusha-Fizuli-Khojali-Khojavend Election District No: 124, member of PEC Khayyam Asadov and observers Yegana Agalarova and Ramila Mammadova put bunches of ballots in the ballot box.
- According to Khalida Ahmadova, who observed the Referendum in precinct # 24 of Zangilan-Qubadli Election District No: 125, Secretary of PEC Rahila Khudaguliyeva and PEC member Medhi Kerimov put bunches of ballots in the ballot box.
- According to Imran Aliyev, who observed the Referendum in precinct # 28 of Nizami Second Election District No: 25, groups of voters were transported to election precincts by a Mercedes with license plate number 10 MG 394.
- According to Tural Qurbanov, who observed the Referendum in precinct # 16 of Lachin Election District No: 121, groups of voters were brought to the precincts by an OTOYOL bus with license plate number 10 UK 683.
- According to Mehebbet Hasanova, who observed the Referendum in precinct # 5 of Nizami First (Ganja) Election District No: 37, voters Mehpare Qasimova and Sabuhi Mammadov voted twice.

- According to Rajab Haqverdiyev, who observed the Referendum in precinct # 68 of Fuzuli Election District No: 84, voter Aladdin Abilov voted twice.
- According to Shahsen Suleymanov, who observed the Referendum in precinct # 30 of Agdash Election District No: 90, voter Ramiq Rasulov voted several times.
- According to Jabir Allahverdiyev, who observed the Referendum in precinct # 8 of Samukh-Shamkir Election District No: 102, voter Ilham Heydarov voted several times.
- According to Elsever Asadov, who observed the Referendum in precinct # 24 of Tovuz Election District No: 105, voter Kenan Huseynov voted on behalf of himself and his father.
- According to Meshedi Ahmadov, who observed the Referendum in precinct # 23 of Shamkir-Dashkasan Election District No: 100, while giving ballots to the voters, Chairman of PEC Solmaz Mammadova told them to vote in favor of the Referendum Act.
- According to Shamsi Sadiqov, who observed the Referendum in precinct # 5 of Tovuz-Qazakh-Agstafa Election District No: 106, a person named Ilkin Hasanov came to the precinct several times and instigated the voters to vote in favor of the Referendum Act.
- According to Sarxan Musayev, who observed the Referendum in precinct # 5 of Gedebey Election District No: 103, member of PEC Namiq Mammadov allowed voters to vote without checking their fingers.

IX. OFFICIAL RESULTS AND POST-REFERENDUM SITUATION

a) Official results

In its meeting held on March 30, 2009, the CEC made a decision (Ref.No. 19/86) on “Concluding March 18, 2009 Referendum and Announcing Referendum Results”. The decision declares that the CEC has approved the final protocol on voting results and the March 18, 2009 Referendum has been concluded. Considering the Referendum valid with this decision, the CEC announced that the Referendum Act on Amendments to the Constitution of the Republic of Azerbaijan was adopted.

According to the CEC protocol on the results of the Referendum, 70.83 percent of 4 917 805 voters registered in the country, i.e. 3 483 173 voters, participated in voting on the Referendum Day.

b) Post-Referendum situation

After the Referendum, the delegation of the Parliamentary Assembly of Council of Europe (PACE) publicized its opinion on it. The delegates supported opinion of Venice Commission that some of the amendments would bring about significant improvement in the Constitution and suggested the Azerbaijan Government to implement them fully.

In the post-Referendum period, among all diplomatic legations accredited to Azerbaijan, only the Embassy of Norway made a statement. The statement read: *“We consider the results of the Referendum. In principle, there regularly emerges a necessity for amending the Constitution. Therefore, it is essential that the amendments take place within the framework of democratic processes. If a referendum is held, first of all, it is very important to ensure freedoms of media and peaceful assembly. However, the way of holding the present referendum in Azerbaijan creates concerns. Moreover, Venice Commission of Council of Europe has noted that lifting the limitation on one person’s election to Presidency for more than two office terms cannot be considered a step forward strengthening of democracy in Azerbaijan.”*

After the Referendum, opposition political parties united in referendum campaigning groups “Republicans” and “Movement for Garabagh and the Republic” issued a statement. In their statement, they declared that only 15 percent of voters participated in the Referendum and therefore,

the Referendum cannot be considered valid. The opposition also stated that the requirements of law were violated and ballot stuffing and interferences in the voting process occurred on the Referendum Day.

c) Post-Referendum complaints

After the Referendum, the CEC considered 2 complaints jointly submitted by Hasan Kerimov and Tofiq Yaqubov, authorized representatives of referendum campaigning groups “For the Sake of Karabakh and the Republic” and “Republicans”, respectively. Acts on violations of law observed on the Referendum Day were also enclosed in the complaints. After investigations, some of the acts were sent to the relevant district election commissions. However, some acts, investigation of which falls within the competence of the CEC, were considered groundless and turned down. Also, suspecting authenticity of some acts, the CEC decided to forward them to the General Prosecutor’s Office.

After announcement of the CEC’s final decision on the Referendum, representatives of the referendum campaigning groups “Republicans” and “For the Sake of Karabakh and the Republic”, which did not recognize the referendum results, sued the CEC’s decision to Baku Court of Appeals. In its sitting on April 6, 2009, Baku Court of Appeals declined their petition about the CEC’s final decision on the Referendum. Representatives of the referendum campaigning groups considered the verdict of the Court as unfair and biased. They stated that while making its decision, the court did not get testimonies of witnesses and investigate facts accurately.

After the Referendum, observers cooperating with EMDS submitted to relevant District Election Commissions (DECs) and the CEC their complaints about violations of law that occurred in Nizami First Election District No: 24, Nizami Second Election District No: 25, Nizami Third Election District No: 26, Nizami First (Ganja) Election District No: 37, Khachmaz City Election District No: 56, Lachin Election District No: 121 and Shusha-Fuzuli-Khojali-Khojavend Election District No: 124. However, none of these complaints were investigated. It should be noted that according to the Election Code²⁸, complaints must be submitted within 3 days after the Referendum. Considering that this 3-day period (March 19, 20, 21) coincided with national *Novruz* holiday in Azerbaijan, majority of the DECs did not function. Therefore, the opportunities of voters whose election rights were violated to appeal for protection of their rights were restricted. Those who applied to relevant election commissions after the holiday were answered that the legal period for submission of complaints ended.

On April 24, 2009, DEC membership of Shemshad Nagiyev, member of Agstafa DEC No: 108 from Hope Party, was terminated by a decision of Ganja Court of Appeals on the grounds that he did not attend the commission and participate in its meetings regularly. Ganja Court of Appeals made its verdict about S.Nagiyev on the basis on act submitted by Agstafa DEC No: 108. However, S.Nagiyev told EMDS that the reason for his expulsion from the DEC was related with the fact that he refused to sign the final protocol of this DEC on Referendum results.

Furthermore, Agstafa DEC No: 108 dismissed S.Nagiyev’s wife, Matanat Azizova, from election commission of precinct # 10. The DEC justified its decision with Election Code’s requirement²⁹ that M.Azizova did not reside in the territory of the relevant election district.

d) Political situation

The March 18, 2009 Referendum led to deepening of the political crisis that emerged after the elections held in recent years (October 15, 2003; November 6, 2005; October 15, 2008). The Referendum was not accompanied by creation of a state-citizen dialogue and public needs for the

²⁸²⁸ Article 112.1 of the Election Code.

²⁹ Article 36.2 of the Election Code.

Referendum Act were not clearly explained. As a result, relations between the government and other political forces, which are the main participants of political processes in the country, became tenser. The most debatable issue among the amendments brought into the Referendum was lifting of the provision *limiting one person's election to Presidency to two office terms*. Annulment of this provision through the Referendum lift removed the restriction for President Ilham Aliyev, who is currently serving his second office term, to participate in the next presidential election as a candidate. Thus, legal-political circumstances were created for concentration of the country's political forces around the ruling political party and its leader. The Referendum also resulted in the strengthening of the positions of the political majority in power.

X. CONCLUSIONS AND RECOMMENDATIONS

Having analyzed the results of its monitoring of the March 18, 2009 Referendum, EMDS came to the following conclusions:

- The Referendum Act on amendments (additions and changes) to the Constitution of the Republic of Azerbaijan was approved the Parliament and brought to general voting without studying public necessity for it and considering opinion of Venice Commission of the Council of Europe.
- On the eve of the Referendum, no steps were taken towards considering recommendations of OSCE/ODIHR and Venice Commission of the Council of Europe with regard to the election law.
- During the Referendum period, election commissions implemented their technical functions in accordance with and in the period established by law. The election commissions especially created necessary conditions for the voters for updating/correcting voter lists. The work of "Elections" Information Center of the CEC in this field can be considered a serious achievement. However, on the eve of the Referendum, the election commissions did not respond adequately to serious violations of law.
- Pre-Referendum political environment in the country did not provide normal conditions for holding the Referendum freely and democratically. In pre-Referendum period, no reforms were undertaken for ensuring freedom of assembly, opportunities for political activity, as well as, freedom of expression and media.
- During the referendum campaigning period, broad public-political debates for giving detailed and comprehensive information about the Referendum to the citizens were not held.
- In the process of creation and registration of referendum initiative groups, interferences and pressures occurred during signature-collecting campaign of the initiative groups formed by the opposition political parties. Pressures were noted against activists of these initiative groups who collected signatures, as well as, voters who gave their signatures to these groups.
- In the referendum campaigning period, serious violations of law, which infringed the principle of equality between opposing sides, took place. Pressures were exerted on authorized representatives of the referendum campaigning groups which campaigned against the Referendum and their campaign materials were destroyed.
- On the Referendum Day, serious violations of law that had occurred in the previous elections – external interferences in the voting process, one person's voting on behalf of another person, instigation of voters to vote for the Referendum, ballot stuffing, falsification of voting results and other violations – were observed.

- Information of the election commission about voter turnout on the Referendum Day creates serious doubts. In some election precincts, voter turnout was either exaggerated artificially or created through illegal ways.
- On the Referendum Day, final protocols of some election precinct commissions on voting results did not conform to the official information announced by the CEC. Also, in some election precincts, the rules on giving copies of final protocols on voting results to observers and posting them at the precinct were not followed.
- In the period after the Referendum Day, complaints about results of the Referendum submitted to the CEC and courts were not investigated objectively and comprehensively.

Taking into consideration the results of its monitoring of the March 18, 2009 Referendum, EMDS came to the following Final Opinion:

- March 18, 2009 Referendum Act was approved without considering opinion of the society, public needs concerning the issues brought to the Referendum were not studied, and the voters were not widely informed about the issues brought to the Referendum.
- Serious violations of law occurred in all stages of the March 18, 2009 Referendum and this process cannot be considered free, fair and democratic. The results of the observation of announcement, organization and conduct of the Referendum shows that the Referendum did not express true will of the Azerbaijani people.

Based on the results of the March 18, 2009 Referendum, EMDS recommends the following:

- In order to overcome violations of law observed in the Referendum and improve election practice in the country, fundamental measures should be taken.
- The present political power should make efforts to create common trust in state-citizen relations, carry out activities to establish mutual confidence between political sides for the purpose of preventing political tensions observed in the society, and provide conditions for free participation of the country's political institutions in the process of state administration.
- All persons violating election rights, especially representatives of local executive structures, should be charged and punished.
- Steps should be taken towards supporting legal initiatives of local and international organizations towards improvement and democratization of the Election Code.
- Composition of the election commissions should be re-organized on the basis of equal representation of major political forces.
- Public debates on evaluation of the Referendum results, deficiencies in the Election Code and other normative acts, and especially, rules on submission of complaints about violation of election rights should be organized.

**Executive Board
Election Monitoring and Democracy Studies Center**

XI. APPENDICES

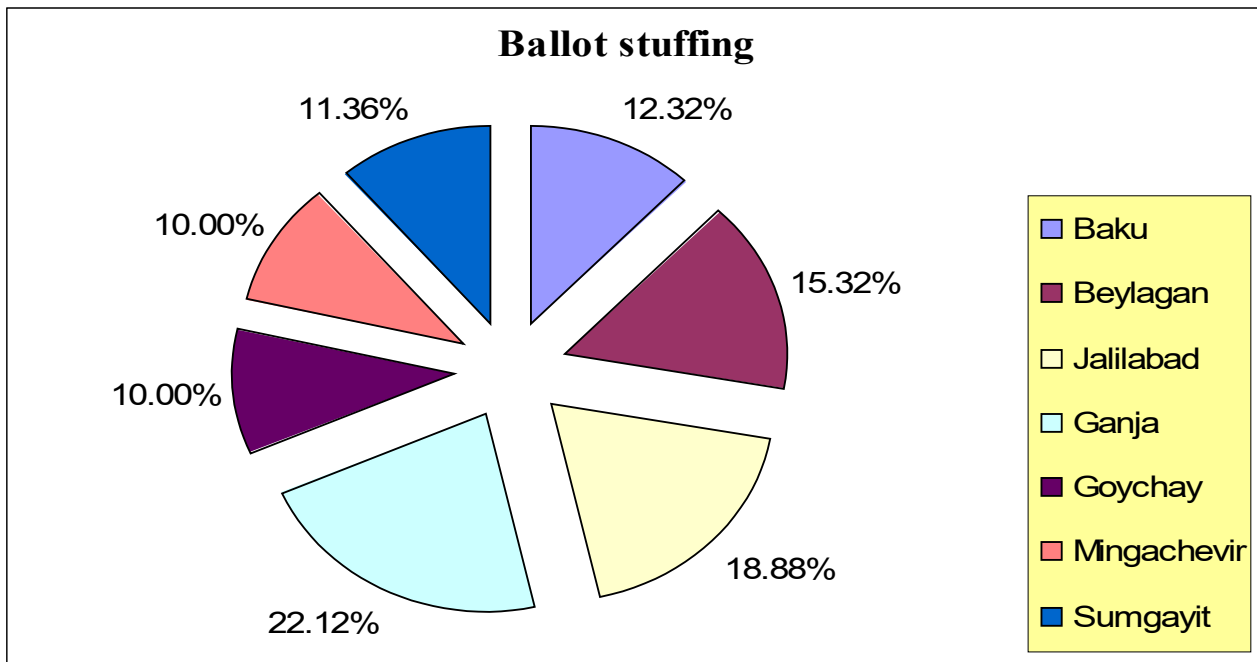
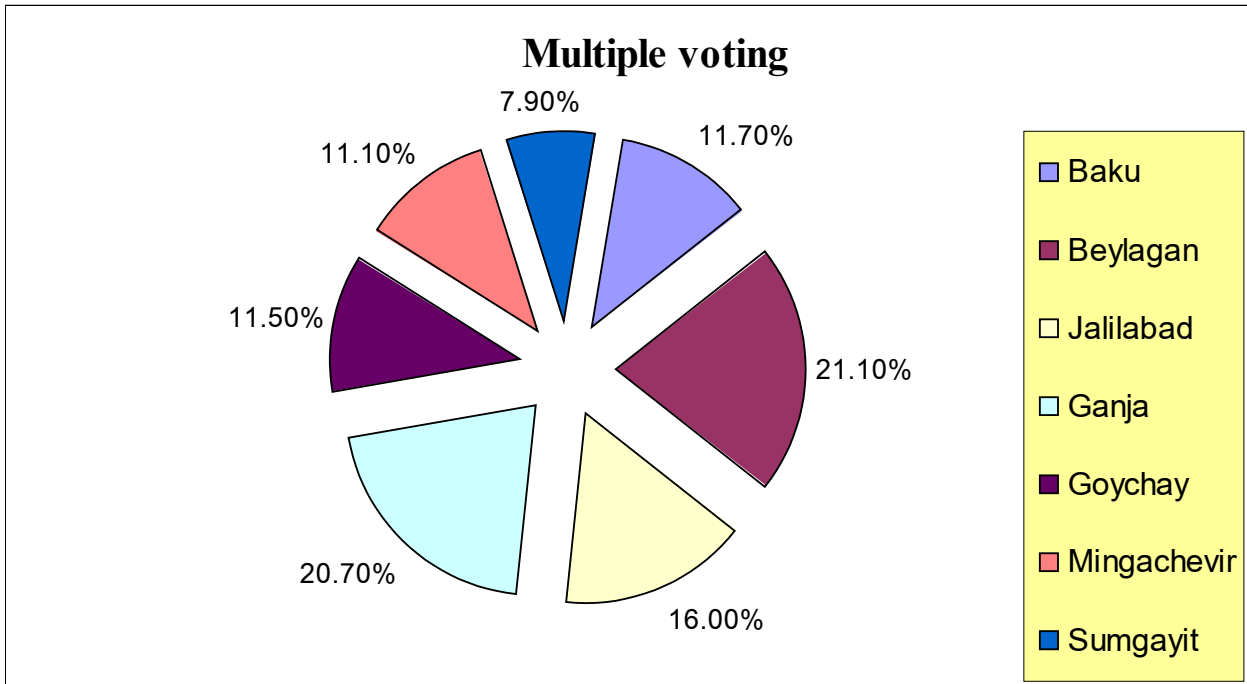
Appendix 1

The LIST of regional observation zones and election districts

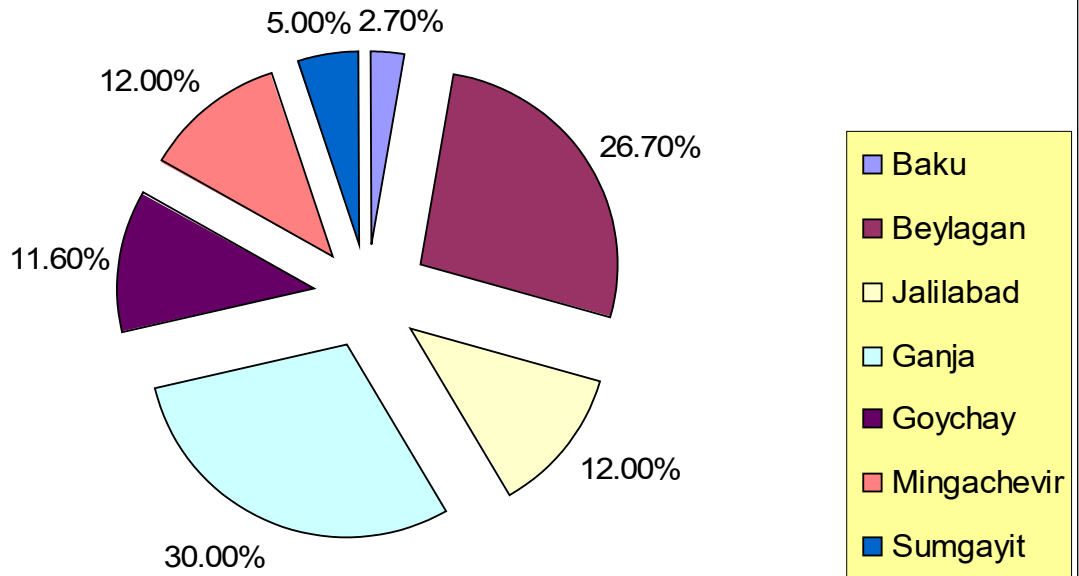
No:	Region observation zone	Number of Election Districts
1	Baku	Election Districts No: 8 – 36
		Agdam city Election District No:118
		Jabrayil-Qubadli Election District No: 120
		Lachin Election District No: 121
		Shusha-Fuzuli-Khodjali- Khodjavand Election District No: 124
		Zangilan-Qubadli Election District No: 125
2	Ganja	Election Districts No: 37 – 40
		Election Districts No: 96 – 108
		Lachin Election District No: 121
		Khankandi Election District No: 122
		Kalbajar Election District No: 123
		Shusha-Fuzuli-Khodjali- Khodjavand Election District No: 124
		Zangilan-Qubadli Election District No: 125
3	Sumqayit	Election Districts No: 41 – 45
		Qobustan-Khizi-Quba Election District No: 50
		Election Districts No 51 – 56,
		Fuzuli Election District No:84
		Lachin Election District No:121
		Kalbajar Election District No: 123
4	Mingachevir	Zangilan-Qubadli Election District No: 125
		Election Districts No: 47 – 49
		Election Districts No: 93 – 95
		Goranboy-Agdam-Tartar Election District No: 97
		Election Districts No: 109, 110, 111, 113, 114, 115, 116, 117,
		Agdam city Election District No: 118
		Agdam village Election District No: 119
		Lachin Election District No:121
5	Beylagan	Kalbajar Election District No: 123
		Election Districts No: 79 – 82
		Agjabadi-Agdam Election District No: 83
		Fuzuli Election District No: 84
		Shirvan Election District No:46
		Election Districts No: 57 – 60, 62-65
6	Goychay	Lachin Election District No:121
		Shusha-Fuzuli-Khodjali- Khodjavand Election District No: 124
		Election Districts No: 85 – 92
		Jabrayil-Qubadli Election District No: 120
7	Jalilabad	Lachin Election District No:121
		Election Districts No: 66-78
		Neftchala Election District No: 61, Shirvan
		Jabrayil-Gubadli Election District No: 120

Note: Election stations of election districts which IP's registered were divided among 6 observation zone.

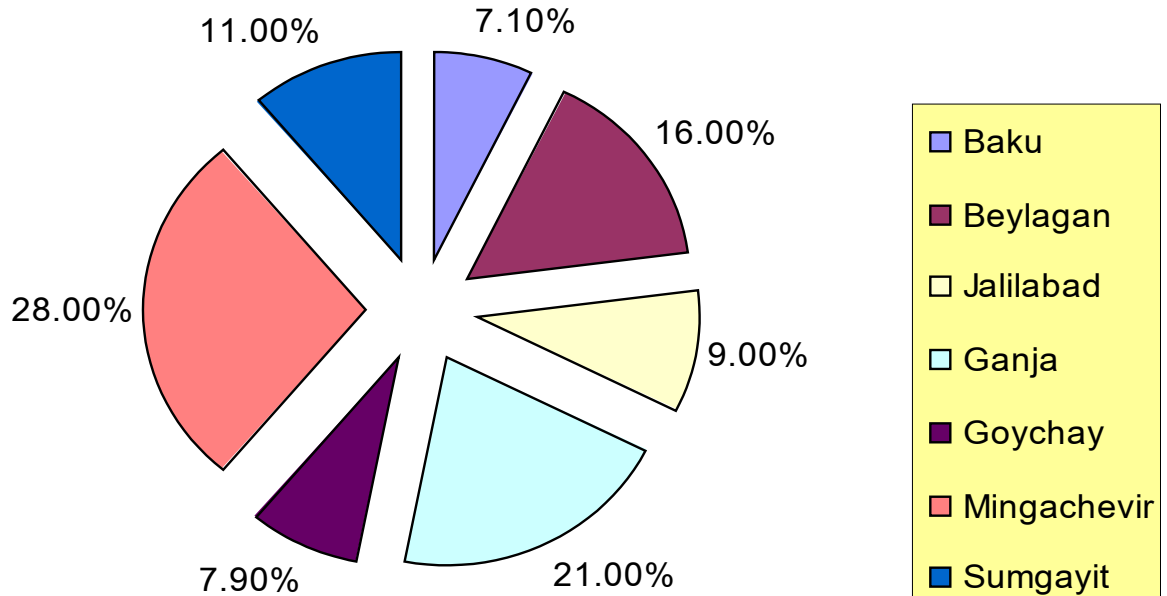
Violations of law observed in the referendum day by regions



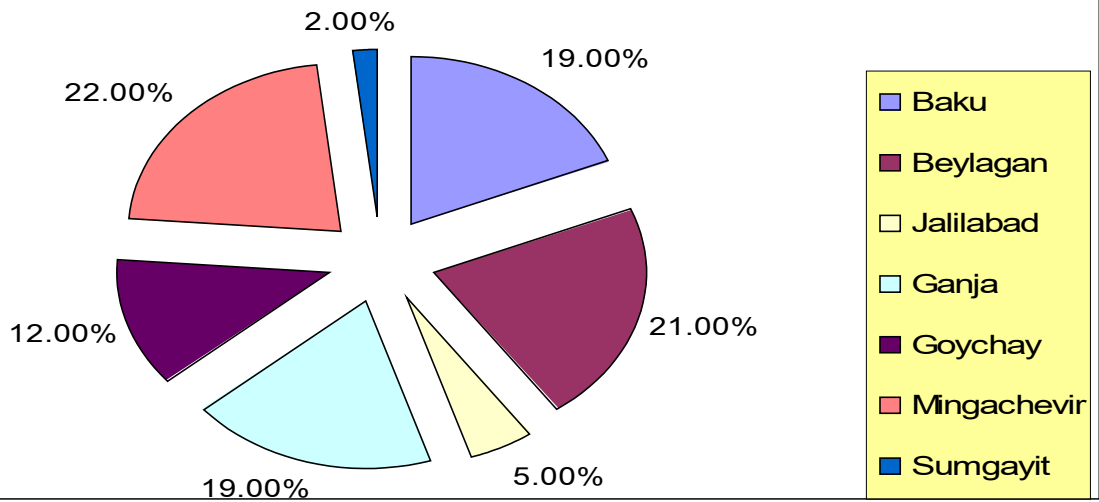
Instigation of voters to vote in favor of the amendments



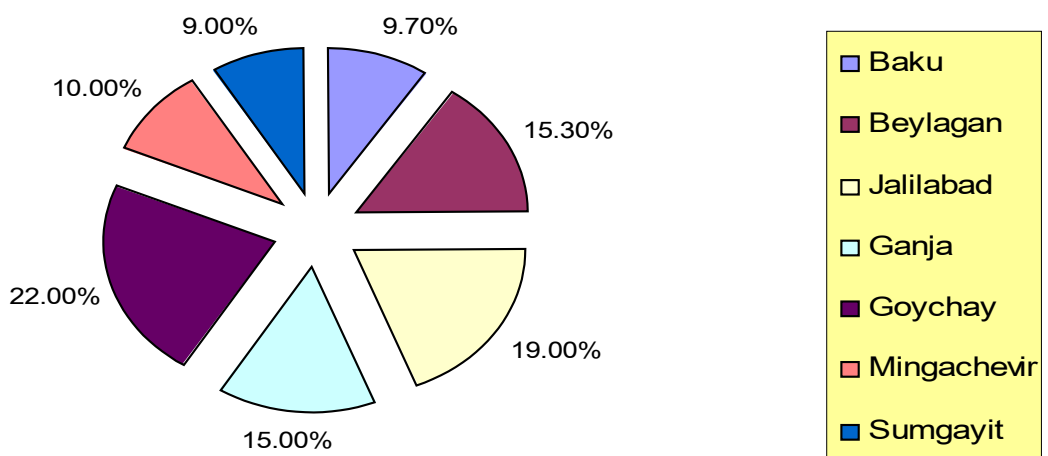
Copies of final protocols were not posted in the precinct

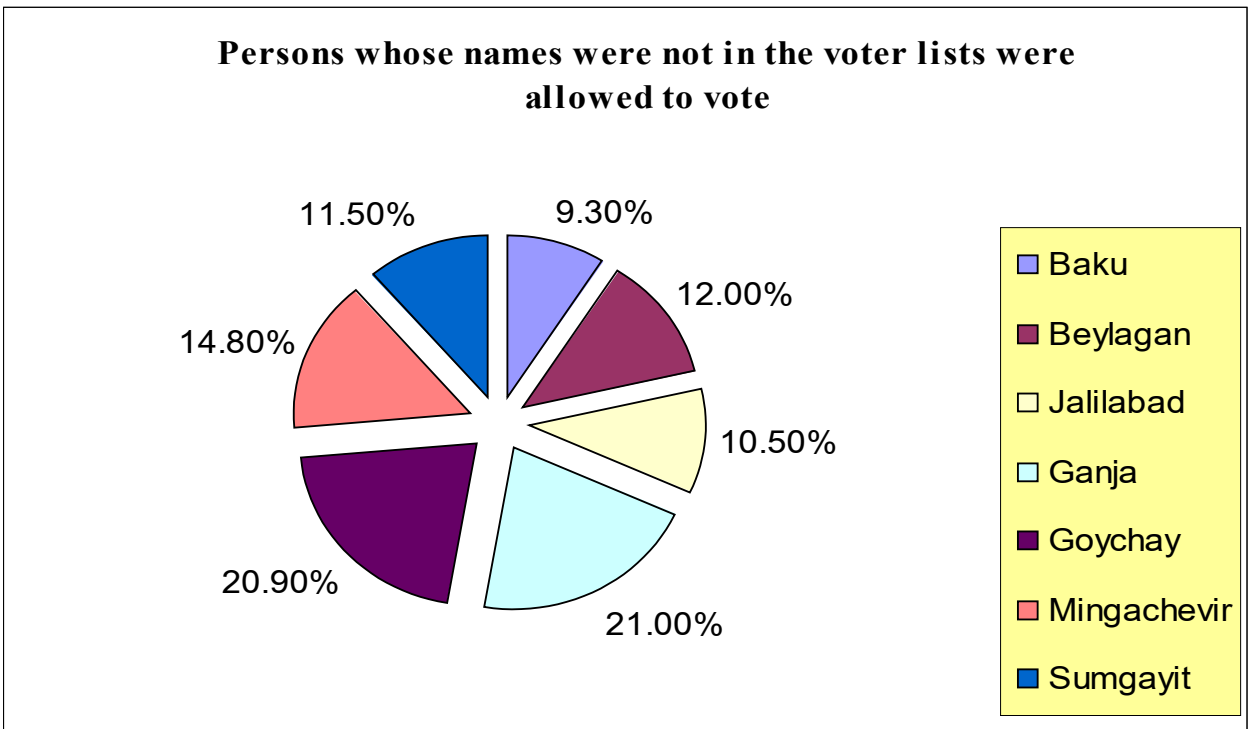
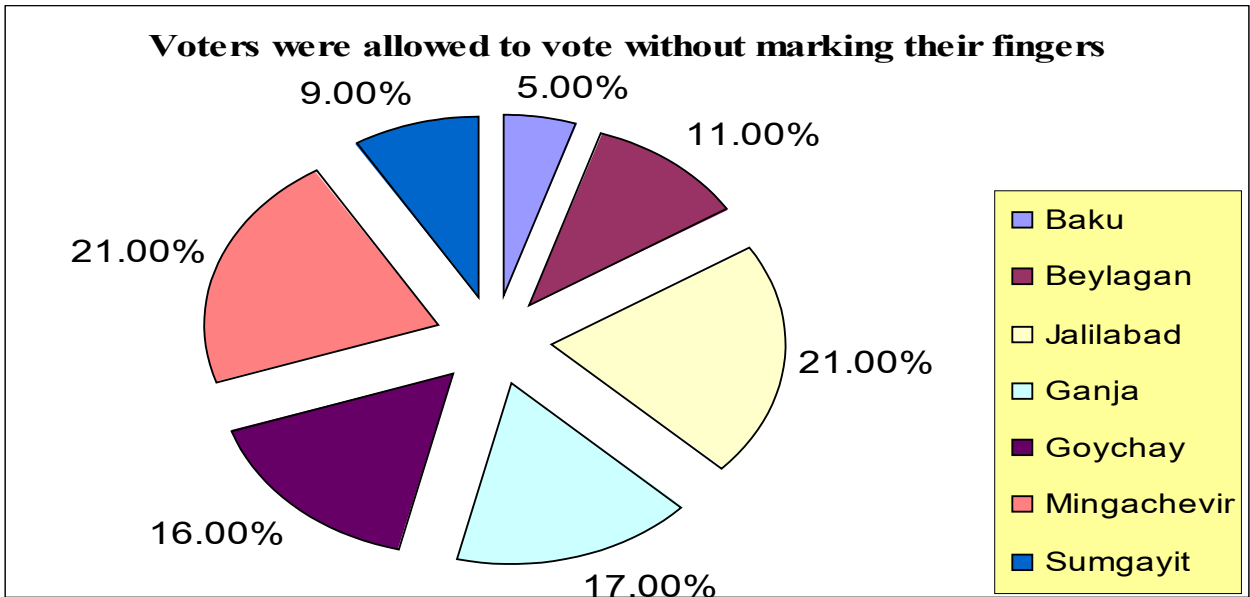


Copies of final protocols were not given to the observers



Voters were allowed to vote without checking their fingers





XII. CONTACT INFORMATION

Address: 3/156 Vagif Avenue, AZ 1007, Baku, Azerbaijan;
 Phone: (+994 12) 596 22 94
 Fax: (+994 12) 596 22 94
 E-mail: aspyo@yahoo.com or emc.az2001@gmail.com