



## **Election Monitoring and Democracy Studies Center**

### **Position Paper**

#### **on the preparation to and political situation prior to the 27 December 2019 Municipal Elections**

##### **I. Summary**

Election Monitoring and Democracy Studies Center (EMDS) prepared an assessment of the preparations to the 27 December 2019 Municipal Elections, the fifth in the history of independent Azerbaijan. The document analyses the pre-election situation and the implementation status of recommendations of domestic and international organizations, particularly those by Office of Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR) and the judgments of the European Court of Human Rights (ECtHR) along with relevant recommendations of the Committee of Ministers of the Council of Europe with regards to improvement of Azerbaijan's election legislation along with current election practices.

EMDS believes that the authorities failed to address shortcomings of the Election Code despite the repeated calls and recommendations of domestic organizations, the Venice Commission of the Council of Europe and the OSCE/ODIHR. Fair composition of election commissions, effective protection mechanisms of the election right, preventing illegal interference with the electoral process, improving regulations for registration of candidates and shortcomings in voter lists remain unaddressed.

EMDS welcomes the decision to lift travel bans imposed on some journalists prior to the elections. However, 112 people, including 5 journalists, remain in prison under political motives for dissenting views and criticising the government. Access to more than 20 websites, including websites of major news outlets like "Azadlig" newspaper, Radio Free Europe, and Meydan TV, is blocked from Azerbaijan which severely restricts the freedom of expression prior to the elections.

EMDS notes with regrets that opposition members frequently face criminal prosecution, and harassment by the authorities which create obstacles for opposition members to pursue candidacy during the upcoming Municipal Elections. Amendments to the legislation adopted by the Parliament in 2013-2015 and the discriminatory policies of the authorities strictly restricted the activities of civil society which ultimately weakened the role of civil society in addressing local and national issues. EMDS regards the increase of restrictions to freedom of assembly in recent years, including administrative detention of 128 persons for attending protest rallies and demonstrations as a threat to political pluralism during the Municipal Elections.

The authorities did not improve the mechanisms for voter registration, an important part of the preparation for the election. A significant discrepancy of the number of voters reported by the State Statistical Committee (SSC) and the figures provided by the Central Election

Commission (CEC) has not been resolved or clarified. The CEC puts the number of voters in the country at more than five million while, according to the SSC, there are around seven million citizens above the voting age of 18. The two million discrepancy has not been addressed. Similarly to previous municipal elections, the authorities failed to ensure the right of people displaced from Nagorno-Karabakh and surrounding regions to vote or be elected.

EMDS stresses that the authorities should prevent undue interference with the registration of independent and opposition candidates, and should demonstrate political will for holding the 27 December 2019 in a free, fair and competitive environment.

In order to ensure freeness and fairness of the elections, the authorities should lift restrictions to the freedom of assembly, guarantee necessary conditions for candidates to hold meetings and rallies with voters, eliminate the ban on opposition views on national TVs, prevent illegal interference with the work of the courts investigating election violations and implement the judgments of the European Court of Human Rights on election violations.

EMDS was founded on 1 December 2008 based on the Election Monitoring Center (EMC) whose registration was revoked by the Ministry of Justice. EMC's registration was revoked based on the court order of Khatai court upon the unlawful claim of the Ministry of Justice on 14 May 2008.

EMDS (former EMC) has conducted monitoring of 15 elections in Azerbaijan since 2001, organized more than 600 training courses for more than 14,000 citizens and provided legal and technical assistance to their accreditation in election commissions.

EMDS is a member the European Network of Election Monitoring Organizations (ENEMO), the Civil Society Forum of Eastern Partnership Countries, the European Platform on Democratic Elections (EPDE) and the Global Network of Domestic Election Monitors.

## **II. Introduction**

Azerbaijan will hold municipal elections on 27 December 2019 and the election period will start 60 days before the Election Day. Election Monitoring and Democracy Studies Center (EMDS) prepared an assessment of the preparations for the elections and analysed the implementation of recommendations of domestic and international organizations, particularly those by OSCE/ODIHR and the judgments of the ECtHR.

The document analyses whether political situation in the country prior to the elections are suitable for free and fair elections, identifies shortcomings in election legislation and practice, and proposes recommendations to address issues that could lead to violation of election rights.

It includes analysis of the implementation of recommendations issued by international election and human rights organizations, including the Council of Europe institutions, particularly recommendations of the Committee of Ministers (CM) with regards to improvement of Azerbaijan's election legislation along with current election practices. The situation of political rights – a prerequisite for free and fair elections – is also discussed in the document.

EMDS was founded on 1 December 2008 based on the Election Monitoring Center (EMC) whose registration was revoked by the Ministry of Justice. EMC's registration was revoked based on the court order of Khatai court upon the unlawful claim of the Ministry of Justice on 14 May 2008. Although EMDS applied for registration to the Ministry of Justice in 2009, the request was denied. EMDS filed a lawsuit in court on the violation of freedom of association. EMDS had to take the case to the ECtHR after domestic courts dismissed its appeal. The communication phase of the case has recently been finalized.

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EMDS operates on the basis of the recommendations of the OSCE/ODIHR and the Venice Commission of the Council of Europe, as well as the principles of the Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations<sup>1</sup>.

### **III. Legal framework and international recommendations**

The right to election is first and foremost guaranteed by the Constitution of Azerbaijan. The Election Code regulates the conduct of elections while laws on Freedom of Assembly, Political Parties, NGOs, and Access to Information play important roles in the legal regulation of electoral processes.

#### **3.1. Shortcomings of national legislation**

The Election Code was adopted on 27 May 2003. However, because it fell short of international standards and requirements of the European Convention on Human Rights (ECHR), the Venice Commission of the Council of Europe and the OSCE/ODIHR have repeatedly criticized the law and made numerous proposals, separately and jointly.<sup>2</sup> The election observation missions of the OSCE/ODIHR have also issued recommendations following every election observed by the institution.<sup>3</sup>

Recommendations of domestic and international organizations covered the following areas of the election legislation:

- Improving the composition of election commissions;
- Establishing effective mechanisms for the protection of election rights;
- Preventing illegal interference with the electoral process;
- Lifting obstacles to the registration of candidates;
- Addressing discrepancies and shortcomings in voter lists;
- Eliminating restrictions on freedoms of expression, association and assembly.

Despite many amendments and changes to the Electoral Code, recommendations of domestic and international organizations have not been considered. On the contrary, the Election Code has moved further away from the standards set by the Council of Europe and the OSCE. For example, as a result of the changes adopted on 2 June 2008, the election period was reduced from 120 to 75 days, and the registration deposit (election deposit), which is considered as an alternative option for registration of candidates, was abolished.<sup>4</sup> Then, following the

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<sup>1</sup> Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations, <http://www.gndem.org/declaration-of-global-principles>

<sup>2</sup> Joint Recommendations of the Venice Commission of the Council of Europe and the OSCE/ODIHR: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2004\)016rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2004)016rev-e)

<sup>3</sup> OSCE/ODIHR's reports on elections held in Azerbaijan, <https://www.osce.org/odihr/elections/azerbaijan>

<sup>4</sup> The Law on Amendments and Additions to the Election Code of Azerbaijan, 2 June 2008, <http://www.e-ganun.az/framework/14930>

amendment on 8 June 2010, the election period was further to 60 days, and the pre-election campaign period was reduced to 23 days. Along with these amendments, the provision on the allocation of state funds for the registered candidates to conduct their election campaign was abolished.<sup>5</sup>

EMDS's recommendations calling for prosecuting persons responsible for election violations, extending the period for filing election complaints, ensuring independence of election commissions and arranging online accreditation of domestic election observers have also been disregarded by the authorities.

The Law on Freedom of Assembly regulates the conduct of gatherings during the pre-election campaign period. The law requires organizers of an assembly to notify relevant executive authorities in written and in advance.<sup>6</sup> However, in practice, the authorities abuse the clause of the law and require permission which is in violation of the Constitution, the law and international documents that the country has signed to. The government has not undertaken any steps to revise the law and bring it in line with the ECHR. On the contrary, amendments to the Code of Administrative Offences adopted in 2012-2013 made sanctions for attending unauthorized assemblies more stringent and increased fines even in cases of peaceful assemblies.

For example, ECtHR stated that the Law on Freedom of Assembly did not correspond to the principle of "good quality law" and raised serious concerns about the foreseeability and precision of the Law which did not specify conditions for restriction, interference and application of force with regards to peaceful assemblies ultimately allowing for abuse of authority.<sup>7</sup>

### **3.2. Recommendations by International Election Observation Missions**

The OSCE/ODIHR, an organization that has observed almost all major elections in the country, produced priority recommendations for holding free and fair elections in the following areas<sup>8</sup>:

- Bringing the Election Code, and the laws on freedoms of assembly, association and expression in line with international standards;
- Guaranteeing the media freedom and decriminalizing the defamation;
- Reforming the composition of election commissions;
- Clarification of voter lists;
- Ensuring effective investigation of election disputes by election commissions and the courts;
- Demonstrating political will for holding fair elections.

There has been no meaningful progress in any of the above-mentioned areas.

The recommendations of election observation missions of the Parliamentary Assembly of the Council of Europe (PACE) have been similar to those of the OSCE/ODIHR but have been more general<sup>9</sup>:

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<sup>5</sup> The Law on Amendments and Additions to the Election Code of Azerbaijan, 18 June 2010, <http://www.e-qanun.az/framework/19854>

<sup>6</sup> The Law on Freedom of Assembly, Article 5.I, <http://www.e-qanun.az/framework/3229>

<sup>7</sup> Gafgaz Mammadov v. Azerbaijan, (Application no. 60259/11), parag.55, <http://hudoc.echr.coe.int/eng?i=001-157705>

<sup>8</sup> The said recommendations are mentioned in almost all final reports of the OSCE/ODIHR, <https://www.osce.org/odihr/elections/azerbaijan/104355>

<sup>9</sup> Observation of the presidential election in Azerbaijan, 9 October, 2013 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20259&lang=en>

- Improving election legislation based on the recommendations of the Venice Commission;
- Living up to commitments taken by Azerbaijan during the accession to the Council of Europe including ensuring freedoms of expression and assembly;
- Creating conditions for strong and credible opposition so the people can freely express their will during elections.

Despite the repeated calls from the international community to implement the above-mentioned recommendations, the authorities failed to demonstrate the political will to hold comprehensive public discussions about the recommendations.

The main recommendations of the Congress of Local and Regional Authorities of the Council of Europe regarding the local governance in Azerbaijan are the followings<sup>10</sup>:

- Eliminating ambiguity and lack of clarity in the Law on the Status of Municipalities and establishing a clear division of authorities between local self-governance and executive authorities;
- Transferring important governance authorities to municipalities and allocating financing in accordance with these authorities;
- Ending the dependency of municipalities from local executive powers;
- Holding elections for the Mayor position of the capital.

The Azerbaijani government has not implemented most of the numerous recommendations of the Congress. Municipalities continue to be subordinate to local executive authorities and they do not yield real administrative power.

In 2019, the Monitoring Committee of the Congress concluded that Azerbaijan was not in compliance of the European Charter of Local Self-Government which it is a party to. The Committee asked Azerbaijani government to provide an explanation for the incompliance and urged the government to implement its commitments.<sup>11</sup>

### **3.3. Implementation of the ECtHR's judgments on election rights**

By signing up to the Protocol 1 of the European Convention on Human Rights (ECHR), Azerbaijan has taken an obligation to hold free and fair elections. ECtHR issued 23 judgments on two parliamentary elections of 2005 and 2010 recognizing violations of election right of more than 50 applicants which were combined in a group case called *Namat Aliyev group v. Azerbaijan*. The ECtHR concluded that the decisions of election commissions and the courts were in violation of the ECHR.<sup>12</sup>

The ECtHR found the following violations in the work of election commissions:

- Election commissions dismissed complaints and evidence provided by candidates without proper grounds;
- Testimonies and statements against applicants were accepted as evidence without examination of their credibility and authenticity;
- Applicants' participation in the process of examination of their complaints was not ensured.

<sup>10</sup>Report by the Congress of Local and Regional Authorities of the Council of Europe, 26 February 2013, [https://rm.coe.int/1680719568#\\_Toc347757447](https://rm.coe.int/1680719568#_Toc347757447)

<sup>11</sup> CLRAE Monitoring Committee – on Democracy and the European Charter of Local Self Government, 03 July 2019, <https://bit.ly/2k8p0JF>

<sup>12</sup> *Namat Aliyev v. Azerbaijan* (18705/06), status of execution, <http://hudoc.exec.coe.int/ENG?i=004-1773>

The ECtHR's conclusions about the domestic courts were as following:

- Domestic courts did not investigate the evidence and important matters presented by applicants;
- Court proceedings appeared to be a formal procedure and repeated the decisions of election commissions;
- Applicants were not allocated sufficient time for preparing their defence;
- The election legislation was incorrectly applied.

The execution of the ECtHR's judgment in the Nemat Aliyev group v. Azerbaijan case was discussed at the Council of Europe's Committee of Ministers' (CM) meetings eight times. In its December 2015 meeting, the CM stated that the Azerbaijani Government had not initiated reforms to bring the elections in line with international standards and called the Government to start the election reforms.<sup>13</sup>

EMDS submitted a report on the status of the execution of the above-mentioned judgments of the ECtHR where it provided statistics and analysis to substantiate the lack of independence in the work of election commissions and courts as the main cause of election violations.<sup>14</sup> EMDS stressed that this issue could not be addressed by capacity building activities for lower-level election commission members as proposed by the government, and comprehensive structural reform of the judicial system and election commissions was required.

In its decision about the Nemat Aliyev group v. Azerbaijan case 3-7 June 2019 meeting, the CM stated that the authorities had failed to implement reforms to ensure that the country's election legislation and practice were compliant with the ECHR despite the series of judgments of the ECtHR in the last 10 years. The ECtHR found the first election violation on 2005 and two more parliamentary elections had taken part since then according to the decision. If the reforms were not implemented, in 2020, the country would go into the fourth parliamentary elections with the electoral system that did not comply with the ECHR.

#### **IV. The situation of political freedoms prior to the election**

##### **4.1. Freedom of Expression**

The authorities lifted travel ban of several independent journalists prior to the elections but five journalists remain imprisoned for politically motivated reasons according to independent human rights defenders.<sup>15</sup>

The independent print media has been completely dismantled as a result of increasing repressions in the last five years. Internet-based media – news websites and Facebook – has become the main platform for alternative and critical views. However, in 2017, the Parliament amended the legislation allowing the Ministry of Communication, Transport and High Technologies to block the access to any website from the country with and without a court decision. Around 20 websites, including the websites of main independent media outlets Radio Free Europe, Meydan TV and Azadlig newspaper, have been blocked since 2017.

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<sup>13</sup> Ibid.

<sup>14</sup> Nemat Aliyev v. Azerbaijan (18705/06), submission by EMDS, <https://rm.coe.int/native/09000016809456f3>

<sup>15</sup> United List of Political Prisoners by Working Group, 3 September 2019, <https://bit.ly/2IXC45f>

## **4.2. Freedom of Association**

### ***a) Political parties***

Opposition members frequently face harassment, intimidation and detentions. They are routinely dismissed from work, fined and detained for administrative offences, and imprisoned under criminal charges. According to EMDS's monitoring, 128 political activists faced administrative detentions in the last 12 months.<sup>16</sup>

Cases torture of detained opposition activists and their lengthy imprisonment by the courts have increased. Nine members of the Popular Front Party and five members of the Islam Party are in prison for politically motivated reasons. As a result of mass arrests in 2015, more than 40 members of the Muslim Unity Movement are in prison.

Several political parties informed EMDS that they hesitated to take part in the upcoming Municipal Elections due to political repressions against their members.

### ***b) Azerbaijan Bar Association***

The crackdown on independent lawyers launched in 2017 resulted in disbarment of two lawyers. Bar membership of six more lawyers was suspended for one year. The Azerbaijan Bar Association (ABA) has also launched disciplinary proceedings about several other lawyers.<sup>17</sup> Recently, in a breach of the law<sup>18</sup>, the ABA attempted to curtail the independence of lawyers by illegally and without their consent assigning them to law bureaus controlled by the the Bar Association.

The Law on Bar Association creates obstacles to efficient and independent work of the organization. For example, the Specialization Commission of the ABA, a body responsible for new admissions, is comprised of 11 members. But only five of those members are from the ABA while the remaining six come are appointed by the Supreme Court and the Ministry of Justice in a blatant breach of conflict of interest rules. The government-appointed members control the majority in the admission process casting a shadow on the independence of the bar association.<sup>19</sup>

### ***c) Civil society***

The environment for civil society remains severely restricted. Series of amendments to laws adopted by the Parliament in 2013-2015 have restricted the independence and operation of civil society organizations (CSO). As a direct result, the role of civic initiatives in local and national issues and the participation of non-governmental organizations in the protection of citizens' rights and freedoms have declined. Numerous calls of the international community to lift the restrictions have not been successful. The authorities should introduce changes in the following areas in order to ensure the free and independent operation of CSOs:

- Simplification of state registration;
- Lifting restrictions on financing from domestic and foreign sources and decreasing fines for breach of regulations;
- Ending political repression and harassment of CSOs.

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<sup>16</sup> EMDS's Assessment Document on politically motivated administrative detentions, <https://smdtaz.org/wp-content/uploads/2019/04/AD-doc.pdf>

<sup>17</sup> Video by EMDS on harassment of lawyers, <https://www.youtube.com/watch?v=VblbtIM9cwo>

<sup>18</sup> Law on Lawyers, Article.V, <http://www.e-qanun.az/framework/257>

<sup>19</sup> Ibid, Article 13.

### 4.3. Freedom of assembly

Restrictions on freedom of assembly have increased in the last year. 128 people were sentenced to administrative detentions in connection with unauthorized assemblies during January 2018 and February 2019.<sup>20</sup>

After 19 January 2019 rally of the National Council of Democratic Forces, an umbrella opposition organization, the Baku City Executive Power have refused all requests of the organization.

## V. Election Commissions

Election administration is executed through the election commissions that are formed every 5 years. Election commissions are formed on three levels – the Central Election Commission (CEC), District Election Commissions (DEC) and Precinct Election Commissions (PEC). Current legislation requires the election commissions to be comprised of three equal groups – members representing the political party that has majority in the parliament (ruling party), parties that have minority seats and independent (non-partisan) MPs. Chairs of election commissions represent the ruling party. In its Final Report on the results of monitoring of 2018 Presidential Elections in Azerbaijan, the OSCE ODIHR stressed that the composition of election commissions did not ensure impartiality of election administration because politically there was no difference among three groups that formed the election commissions.<sup>21</sup>

The ECtHR stressed in their judgments that the current composition violated the grounds for election commission's impartiality and independence. In the case of Gahramanli and others v. Azerbaijan, the ECtHR concluded that “although there can be no ideal or uniform system guaranteeing checks and balances between the different State powers or political forces within a body of electoral administration, the Court shares the view that the proportion of pro-ruling-party members in all electoral commissions in Azerbaijan, including the CEC, is currently particularly high.”<sup>22</sup> However, the current composition of election commissions, including the CEC ensures the domination of pro-government parties which is the ultimate obstacle to commissions' independence and impartiality. Therefore, the ECtHR concluded that “reforming the structural composition of the electoral commissions should be encouraged with the aim of improving the effectiveness of examination of individual election-related complaints”.<sup>23</sup>

Despite the rulings of the ECtHR on election violations for which majority of the district election commissions, including the chair of the Central Election Commission (CEC) who has been in that position for over 10 years, carry the responsibility, the same people are still represented in election commissions.

On the contrary to the recommendations of the Venice Commission, the PACE and the OSCE/ODIHR on ensuring equal representation of political forces at election commissions in 2003 during the adoption of the Election Code, there has been no positive changes in this regard.

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<sup>20</sup> SMDT-nin siyasi motivli inzibati həbslərlə bağlı dəyərləndirmə sənədi, <https://bit.ly/2lP2DJq>

<sup>21</sup> OSCE/DTIHB-ın Azərbaycanda keçirilən 11 aprel prezident seçkiləri ilə bağlı Yekun Hesabatı, səh. 7, <https://www.osce.org/odihr/elections/azerbaijan/388580?download=true>

<sup>22</sup> Qəhrəmanlı və başqaları v. Azərbaycan (parag. 78)

<sup>23</sup> Ibid, parag. 79



## **VI. Voter registration**

### **6.1. Statistical discrepancy in voters' number**

The authorities have not explained the discrepancy in the number of voters provided by the CEC and the State Statistical Committee in the last 10 years. The CEC puts the number of voters in the country at 5,212,902 while the State Statistical Committee claims that there are more than 7 million citizens above the voting age of 18. The CEC has not provided any explanation for the almost 2 million difference in numbers. The difference is likely to come from that the State Statistical Committee not accounting for a large number of the population residing abroad. However, there has never been an official explanation of the discrepancy or document confirming the assumption above.

Despite the fact that there are just three months left until the election, the authorities have not addressed the discrepancy between the figures of the CEC and the State Statistical Committee.

### **6.2. Participation of Internally Displaced Persons in the Municipal Elections**

The Constitution guarantees same rights for Internally Displaced Persons (IDP) as other citizens. The Guiding Principles on IDPs developed by the UN High Commissioner for Refugees (UNHCR) stipulates that IDPs have a right to take part in elections, state and public affairs.<sup>24</sup> However, in Azerbaijan, IDPs are able to participate in the Parliamentary and Presidential elections but not in the Municipal elections. The Election Code requires permanent residency for voters and candidates for Municipal elections while IDPs have only temporary residency.<sup>25</sup>

The authorities violate the election rights of hundreds of thousands of IDPs from Nagorno-Karabakh and surrounding regions preventing them from taking an active and passive part in Municipal Elections.<sup>26,27</sup> This is a violation of the Constitution<sup>28</sup> and the country's international obligations<sup>29</sup>. The Special Rapporteur of the UN has called the government to ensure the election right of IDPs.<sup>30</sup>

## **VII. Conclusions and Recommendations**

EMDS notes with regret that prior to the 27 December 2019 Municipal Elections, fundamental rights and freedoms that are essential for free and fair election environment have been restricted, and no steps have been put forward with regards to improvement of election legislation and practice.

EMDS recommends the following measures to be taken in order to ensure free, fair and competitive elections:

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<sup>24</sup> UN's Guiding Principles on Internal Displacement, Principle 22, <https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>

<sup>25</sup> The Election Code of the Republic of Azerbaijan, Article 9.2

<sup>26</sup> Limited Voting Rights for Azerbaijan's Displaced, <https://bit.ly/2ztx1Of>

<sup>27</sup> <https://bit.ly/2kDS8IX>

<sup>28</sup> The Constitution of the Republic of Azerbaijan, Article 56, <http://www.e-qanun.az/framework/897>

<sup>29</sup> International Covenant on Civil and Political Rights, Article 25, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>30</sup> Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, Follow-up mission to Azerbaijan, 8 April 2015. parag. 50-54, 82,

- Preventing any illegal interference with the registration of independent and opposition candidates, and demonstrating a political will to form a competitive election environment;
- Lifting restrictions on freedom of assembly and providing necessary conditions for candidates to meet with their voters and to hold assemblies;
- Eliminating obstacles to free operation of political parties and CSOs, ending harassment of activists and releasing political prisoners;
- Removing the ban on opposition views on national TVs, creating opportunities for everyone to express their views on TV, and preventing TVs from becoming a propaganda tool for the ruling party;
- Executing judgments of the ECtHR on election rights and implementing the decisions of the CM regarding these judgments in order to prevent future violations;
- Preventing any undue political interference with the courts examining election complaints and ensuring their fair investigation;
- Referring to the judgments of ECtHR and international election standards while reviewing election complaints at courts.

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