

Institute for Reporters' Freedom and Safety

# Azerbaijan at the OSCE: Ignoring the Human Dimension



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[www.irfs.org](http://www.irfs.org)

September 2013

## Acknowledgements

This report is a publication of the Institute for Reporters' Freedom and Safety (IRFS). The report was written by human rights consultant Rebecca Vincent, supported by research conducted by IRFS CEO & Chairman Emin Huseynov and his team. It was edited by Gulnara Akhundova, program manager for International Media Support. An edited version of the content of this report has also been published as part of a broader IRFS report examining Azerbaijan's implementation of its commitments with various human rights bodies.

This report has been published thanks to generous support from the International Media Support (IMS).



## Introduction

Since its inception in the Helsinki Final Act of 1975, the Organization for Security and Co-operation in Europe (OSCE) has been firmly committed to the promotion and protection of human rights.<sup>1</sup> This commitment is enshrined in many other OSCE documents, such as the 1990 Copenhagen Document, the 1990 Charter of Paris for a New Europe, and the 1991 Moscow Document, which are politically binding on the organization's 56 participating States.

Azerbaijan joined the OSCE in 1992, and in doing so, committed to upholding OSCE values, including those related to the "Human Dimension," which is described by the OSCE as the term "used to describe the set of norms and activities related to human rights and democracy that are regarded within the OSCE as one of three dimensions of security, together with the politico-military and the economic and environmental dimensions."<sup>2</sup>

The OSCE lacks a specific enforcement mechanism to ensure that participating States fulfill their human rights obligations, such as a court or a treaty-monitoring body, as OSCE commitments are politically rather than legally binding; however, the OSCE influences the human rights behavior of its participating States through its various human rights institutions, and through its in-country representation, such as the OSCE Office in Baku. Although not legal binding, OSCE commitments are more than a simple declaration of will or good intention; they are a political promise to comply with these standards.

While Azerbaijan has historically made an effort to cooperate with the OSCE – at least, on the surface – this year has been a troubled one for the OSCE-Azerbaijan relationship. The Azerbaijani government has expressed increasing hostility towards the organization, culminating in an eventual consensus decision to downgrade the mandate of the OSCE Office in Baku to a Project Coordination Office, which will take effect in January 2014.

At the same time, uncertainty persisted surrounding the question of whether the Azerbaijani government would extend an invitation to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to monitor the upcoming 9 October presidential election. Although President Aliyev announced in June that international observers

<sup>1</sup> <http://bit.ly/191q2Et>

<sup>2</sup> <http://bit.ly/1eODQlg>

would be invited, ODIHR was kept waiting longer than usual.<sup>3</sup> The government finally issued an official invitation letter in August, less than a month before ODIHR deployed its long-term observation mission.<sup>4</sup>

This report provides a brief outline of human rights commitments undertaken by Azerbaijan through its OSCE membership, and examines the key OSCE institutions that engage with the Azerbaijani authorities on their human rights obligations – namely the OSCE Office in Baku, ODIHR, and the Representative on Freedom of the Media – as well as the government’s consistent failure to seriously address recommendations made by these institutions on measures needed to improve the human rights situation in the country.

<sup>3</sup> <http://bit.ly/1b6YB2b>

<sup>4</sup> <http://bit.ly/19IUzsl>

# OSCE Human Rights Commitments

The commitments undertaken by participating States span a wide range of human rights issues. An exhaustive list is provided in the OSCE publication, *OSCE Human Dimension Commitments*.<sup>5</sup>

Of particular relevance to Azerbaijan – and to this report – are those commitments related to civil and political rights. Azerbaijan is failing to implement many of these commitments, in particular, the fundamental freedoms of expression, assembly and association, which are under attack in the run-up to Azerbaijan’s 9 October presidential election.

The Copenhagen 1990 document contains among the most detailed description of participating States’ commitments to respect and protect these fundamental freedoms:

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will (...)

(7.6) – respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities; (...)

(9) The participating States reaffirm that

(9.1) – everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright;

(9.2) – everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards;

(9.3) – the right of association will be guaranteed. The right to form and – subject to the general right of a trade union to determine its own membership –

<sup>5</sup> <http://bit.ly/18fm4a9>

freely to join a trade union will be guaranteed. These rights will exclude any prior control. Freedom of association for workers, including the freedom to strike, will be guaranteed, subject to limitations prescribed by law and consistent with international standards;

(9.4) – everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one’s religion or belief and freedom to manifest one’s religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards; (...)

(10.1) – respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information;

(10.2) – respect the rights of everyone, individually or in association with others, to study and discuss the observance of human rights and fundamental freedoms and to develop and discuss ideas for improved protection of human rights and better means for ensuring compliance with international human rights standards;

(10.3) – ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups; (...)

As documented by IRFS in previous publications such as *The Right to Remain Silent*,<sup>6</sup> as well as by many other domestic and international human rights organizations, the Azerbaijani government is failing to implement these commitments; on the contrary, authorities are committing systematic and widespread violations of these rights.

Azerbaijan is also failing to implement its commitment to freedom from arbitrary arrest or detention, as outlined in the Vienna 1989 document: “The participating States will ensure that no one will be subjected to arbitrary arrest, detention or exile.”<sup>7</sup> According to the Baku-based Human Rights Club, Azerbaijan currently has more than 100 political prisoners, many of whom were arrested in connection with exercising their rights to freedom of expression, assembly, or association.

<sup>6</sup> <http://bit.ly/19R6pBa>

<sup>7</sup> <http://bit.ly/164IrOY>

# OSCE Human Rights Institutions

As the OSCE lacks a specific enforcement mechanism to ensure participating States carry out their human rights obligations, OSCE institutions with mandates related to human rights, as well as the OSCE's in-country representations, play an important role in holding participating States accountable for implementing their politically binding human rights obligations. To that end, three of the most significant institutions for Azerbaijan have been examined below: the OSCE Office in Baku, ODIHR, and the Representative on Freedom of the Media.

Besides these institutions, it should be noted that two other OSCE institutions have mandates specifically dealing with human rights issues: the Office for the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, and the High Commissioner on National Minorities.

## *OSCE Office in Baku*

The most direct day-to-day engagement the OSCE maintains with Azerbaijan is through its in-country representation, the Office in Baku (OiB). OSCE Permanent Council Decision No. 258 from 1999 set out the mandate for the OSCE OiB. Currently, the OiB is mandated to perform the following tasks:

- Promote the implementation of OSCE principles and commitments as well as the co-operation of the Republic of Azerbaijan within the OSCE framework, in all OSCE dimensions, including the human, political, economic and environmental aspects of security and stability;
- Facilitate contacts, co-ordinate activities and promote information exchange with the Chairman-in-Office and other OSCE institutions as well as co-operation with international organizations and institutions;
- Establish and maintain contacts with local authorities, universities, research institutions and NGOs and assist in arranging events with OSCE participation;
- Perform other tasks deemed appropriate by the Chairman-in-Office or other OSCE institutions and agreed on between the Republic of Azerbaijan and the OSCE.<sup>8</sup>

<sup>8</sup> <http://bit.ly/1932pg4>



However, as mentioned above, 2013 has been a difficult year for the OiB, as the Azerbaijani government fought hard for a downgrade in the office's mandate. Although some participating States – notably, the United States – initially strongly resisted the downgrade in mandate, eventually they joined consensus.<sup>9</sup>

Per Permanent Council Decision No. 1092 of 26 July 2013, the mandate of the current OiB will expire on 31 December 2013. The new OSCE Project Co-ordinator in Baku will be expected to perform the following tasks:

- To support co-operation between the Government of the Republic of Azerbaijan and the OSCE and its institutions aimed at implementing OSCE principles and commitments;
- To carry out planning and implementation of projects between relevant authorities of the Republic of Azerbaijan and the OSCE and its institutions. Such projects will cover all three dimensions of the OSCE's comprehensive security concept, taking into account the needs and priorities of the Government of the Republic of Azerbaijan;
- To that end to maintain contacts with governmental as well as non-governmental bodies, local authorities, universities, research institutions and NGOs of the Republic of Azerbaijan;
- To perform other tasks deemed appropriate by the Chairperson-in-Office or other OSCE institutions and agreed upon between the Government of the Republic of Azerbaijan and the OSCE.<sup>10</sup>

It remains unclear to what extent the change in mandate will affect the day-to-day operations of the OSCE's presence in Baku. The U.S. Mission to the OSCE put a positive spin on the decision in a statement following the adoption of the new mandate:

The United States is pleased that agreement has been reached with the government of Azerbaijan for the OSCE to maintain its important presence in Baku when the OSCE Office's current mandate expires at the end of the year.

We joined consensus because we strongly support the important work of the office in assisting Azerbaijan to meet its commitments in all three OSCE dimensions. We are pleased that the office will continue to 'support

<sup>9</sup> For example, see <http://1.usa.gov/10VI6Bt>

<sup>10</sup> <http://bit.ly/15SAQJS>

cooperation between the Government of Azerbaijan and the OSCE and its institutions aimed at implementing OSCE principles and commitments.’ We welcome the pledge this agreement represents to ensure implementation of commitments in all three OSCE dimensions, including commitments to Azerbaijan’s democratic development. The foundation of any truly democratic state is respect for the rule of law, human rights, and fundamental freedoms, including the freedoms of association, assembly, and expression. We will look to the Government of Azerbaijan to ensure a continued robust OSCE field presence that works in all three dimensions throughout the country and engages with the full spectrum of Azerbaijani society, as provided for in the current and future mandates of the office.<sup>11</sup>

IRFS views the downgrade in mandate of the OiB as a negative step, and believes the move will weaken the ability of the OSCE to hold Azerbaijan accountable for its human rights obligations.

### *Office for Democratic Institutions and Human Rights*

ODIHR is perhaps the most internationally well-known OSCE human rights institution, due largely to its function as the predominant international election monitoring body in the OSCE region.

ODIHR has observed a total of eight elections in Azerbaijan since 1995, including the 2003 presidential election, through which Ilham Aliyev came to power, and the subsequent presidential (in 2008) and parliamentary elections (in 2005 and 2010) since he has been in office. None of these elections met international standards for fair and free elections, as highlighted in ODIHR’s reports.<sup>12</sup>

The most recent Azerbaijani elections monitored by ODIHR were the November 2010 parliamentary elections. In its Election Observation Mission Final Report, ODIHR concluded:

Certain conditions necessary for a meaningful and competitive election were lacking in these elections. The fundamental freedoms of peaceful assembly and expression were limited and a vibrant political discourse facilitated by free and independent media was almost impossible. A deficient candidate registration process, a restrictive political environment, unbalanced and biased media coverage, disparity in access to resources to mount an effective campaign, misuse of

<sup>11</sup> <http://1.usa.gov/14MIu2h>

<sup>12</sup> <http://bit.ly/1e3QK6G>

administrative resources as well as interference by local authorities in favor of candidates from the ruling party created an uneven playing field for candidates. Not all electoral contestants were able to compete on a basis of equal treatment by the authorities as called for in paragraph 7.6 of the OSCE Copenhagen Document. Overall, these elections failed to meet a number of key OSCE commitments for democratic elections and important elements of Azerbaijani domestic legislation.<sup>13</sup>

ODIHR's findings for the most recent presidential election in October 2008 were similarly grim. In its Election Observation Mission Final Report, ODIHR concluded:

While the presidential election marked considerable progress towards meeting OSCE commitments and other international standards, in particular with regard to some technical aspects of election administration, the election process failed to meet some OSCE commitments. The election took place in a peaceful environment, but was characterized by a lack of robust competition, a lack of vibrant political discourse, and a restrictive media environment, and thus did not reflect some of the principles necessary for a meaningful and pluralistic democratic election.<sup>14</sup>

Over the years, the Azerbaijani government has taken steps to address minor technical problems impeding the fair and free conduct of elections, implementing recommendations on measures such as finger-inking and taking care to ensure that some of the more visible forms of electoral fraud were minimized, such as family voting. But at the same time, some of the most damaging means of electoral fraud have persisted, such as barring observers from the vote counting and tabulation process, and tampering with the final protocols.

Most significantly, the government has consistently ignored ODIHR's recommendations for many of the most important underlying changes needed to ensure the democratic conduct of elections. Rather than improving the climate for media freedom, allowing all candidates to express their views freely, all citizens to access a wide range of information and opinions, and society in general to engage in robust public debates on matters of policy, the government has cracked down, each year taking further steps to restrict the expression of any form of criticism or dissent.

Rather than easing restrictions on citizens' ability to exercise their right to peacefully assemble, the government has severely limited the areas where rallies are allowed to be held, requiring permission from the authorities for any rally to take place, and steeply

<sup>13</sup> <http://bit.ly/ebHs8m>

<sup>14</sup> <http://bit.ly/YPKxAR>

increased the fines for organizing or participating in unsanctioned rallies, as well as the maximum period of administrative detention for such an offense, making it possible for protesters to be detained for up to 60 days in certain cases.<sup>15</sup>

Finally, rather than taking steps towards greater protection of the right to freedom of association, the authorities continue to persecute members of the political opposition, going to great lengths to make it impossible for opposition parties to function as normal political parties and to prevent known oppositionists and their families from living normal lives. According to the Human Rights Club there are now more than 100 political prisoners in the country, including the opposition Republican Alternative (REAL) Movement's presidential candidate, Ilgar Mammadov, and dozens of other civic and political activists.

As it stands, the government has focused its efforts largely on the appearance of election day itself, seeking to achieve small technical improvements with each passing election, while at the same time taking steps behind-the-scenes to limit citizens' exercise of the fundamental rights and freedoms most needed for an election to be considered democratic.

As mentioned above, the question of whether ODIHR would observe the upcoming 9 October presidential election remained unanswered for longer than usual, causing much speculation about the government's intentions. But after finally setting a date for the election – which also took place later than usual, on 2 August – the Azerbaijani government issued formal invitations to ODIHR and the other prominent international election monitoring bodies.

Having started preparations to monitor the election prior to receiving the formal invitation to do so, ODIHR was able to proceed with deploying an election observation mission to Azerbaijan on 29 August. Long-term observers are due to arrive in the country on 9 September, and short-term observers will arrive on 5 October. The mission's preliminary findings and conclusions will be released on 10 October, the day after the election.<sup>16</sup>

Beyond election monitoring, ODIHR deals with human rights and democratization more broadly, assisting participating States in implementing their human dimension commitments by providing expertise, working with OSCE field missions, organizing meetings and events such as the Human Dimension Implementation Meeting, and so on.<sup>17</sup>

While ODIHR is officially mandated, *inter alia*, to “monitor and report on implementation of commitments,” as repeatedly highlighted by IRFS and other Azerbaijani rights

<sup>15</sup> <http://bit.ly/15ldhXY>

<sup>16</sup> <http://bit.ly/16QNQcx>

<sup>17</sup> <http://bit.ly/1937Yee>

groups, there is a lack of visible communication between ODIHR and the Azerbaijani government on implementation of Azerbaijan's human dimension commitments.

It remains unclear how the downgrade in mandate of the OiB will affect ODIHR's efforts to ensure Azerbaijan's implementation of human dimension commitments.

### *Representative on Freedom of the Media*

In recent years, the OSCE Representative on Freedom of the Media (RFOM) has proven to be the OSCE institution most significantly engaged with Azerbaijan on a human rights issue. As media freedom has increasingly emerged as one of the most pressing human rights issues in Azerbaijan, the RFOM has become a key mechanism for pressing for human rights reform in the country.

The RFOM is tasked with observing media developments in participating States and advocating and promoting "full compliance with OSCE principles and commitments in respect of freedom of expression and free media." To do this, the RFOM assumes an early warning function, provides a rapid-response mechanism, and monitors and collects information on the media situation in participating States.<sup>18</sup>

Since Ilham Aliyev came to power in 2003, three individuals have served as the OSCE RFOM. Freimut Duve was the first RFOM, serving from 1998 through 2003. Miklós Haraszti served as the second RFOM, from March 2004 to March 2010. The current RFOM, Dunja Mijatović, was appointed in March 2010, and then reappointed for a second term in March this year, which will end in March 2016.<sup>19</sup>

In recent years, the RFOMs have undertaken many missions to Azerbaijan and made many statements expressing concern about freedom of expression violations in the country, in particular the arrests of journalists and bloggers, the cycle of violence against journalists and impunity for their attackers, the continued existence of criminal defamation provisions, and moves to limit freedom of expression online.

Dunja Mijatović, the current RFOM, continues to maintain a serious and high-profile focus on Azerbaijan. She has undertaken several missions to Azerbaijan, and has issued numerous statements calling for the release of imprisoned journalists and bloggers, greater steps towards ensuring the protection of the safety of journalists and bloggers,

<sup>18</sup> <http://bit.ly/1511FnL>

<sup>19</sup> <http://bit.ly/UIXCkM>

the decriminalization of defamation, and other measures needed to improve the media freedom climate in the country.

Most recently, in June, Mijatović issued a joint statement with Council of Europe Commissioner for Human Rights Nils Muižnieks, expressing serious concern by the recent adoption of regressive legislation extending criminal defamation provisions to online content. In the statement, the two experts said they “regretted this step, which clearly contradicts Azerbaijan’s commitments and obligations relating to the decriminalization of defamation and freedom of expression in general.” They also said they were “wary of the chilling effect that these provisions are bound to have on those wishing to use the Internet to raise legitimate critical voices,” and expressed concern “that the new changes will further erode the already limited space for free expression in the country.”<sup>20</sup>

Mijatović also recently condemned the sentencing of *Khural* newspaper editor-in-chief Avaz Zeynalli to nine years in jail in May, stating “I have been monitoring the criminal case against Zeynalli and was already concerned about his 13-month-long detention. I am disappointed that my hopes for a fair retrial have not been fulfilled, and that he now faces a long imprisonment.” She further expressed concern regarding the continued intimidation of Radio Free Europe/Radio Liberty journalist Khadija Ismayilova.<sup>21</sup>

While Azerbaijan has generally cooperated with the RFOM by allowing mandate-holders to conduct their missions, meeting with them while they are in the country, and responding to statements made by the RFOM about developments in Azerbaijan, as is the case with their engagement with many other international human rights experts, this cooperation has proven to be superficial in nature.

In fact, the Azerbaijani authorities have failed to take significant steps towards fulfilling many of the recommendations made by the RFOM. Although journalists and bloggers have often been released from prison early before completing their entire sentences, the cycle of arrests continues, as other critical journalists and bloggers continue to face politically motivated arrests and imprisonment in connection with their work.

With regard to the many calls to put a stop to attacks against journalists and impunity for their attackers, violence against journalists continues, with more than 200 cases documented by IRFS since the murder of *Monitor* magazine editor-in-chief Elmar Huseynov in March 2005. Virtually none of these cases have been seriously investigated or prosecuted, resulting in a climate of complete impunity for those who wish to use violence to silence critical voices, and a climate of fear for Azerbaijan’s media community.

<sup>20</sup> <http://bit.ly/15EihEu>

<sup>21</sup> <http://bit.ly/YVWHwl>

As for defamation, not only have the authorities not heeded calls by the RFOM – and indeed, the broader international community – to abolish criminal defamation provisions, but also, as mentioned above, the Azerbaijani parliament recently adopted legislation extending these provisions to online content, and President Aliyev signed the bill into law. This act perfectly illustrates the fact that when it comes to human rights, the Azerbaijani government does not take seriously its commitments with international organizations like the OSCE or recommendations from high ranking international officials like the RFOM.

## Conclusion

As is the case in its relations with other international organizations, the Azerbaijani government has generally made an effort to cooperate with the OSCE to a certain extent – participating in a wide range of OSCE meetings and events, inviting ODIHR to monitor elections, cooperating with the RFOMs during missions to the country, and so on. However, as evidenced by its push for a downgrade in mandate of the OiB, the Azerbaijani government seems to be less concerned about appearances when it comes to the OSCE than other international bodies. Perhaps that is due to the politically binding, rather than legally binding, nature of OSCE commitments.

As this report illustrates, the nature of Azerbaijan’s cooperation with the OSCE remains superficial. The Azerbaijani government is simply failing to take its human rights obligations seriously, and is committing widespread and systematic violations of its citizens rights, in direct contradiction to its obligations with the OSCE and other international bodies.

To that end, IRFS has developed a set of recommendations to the OSCE for specific steps needed to improve Azerbaijan’s implementation of its obligations.

IRFS calls on the OSCE to take the following steps:

- Ensure that ODIHR’s election monitoring report on Azerbaijan’s 9 October presidential election fully addresses the underlying widespread and systemic human rights violations that persist from election to election, preventing elections from meeting international democratic standards.
- Carefully monitor the transition of the Office in Baku to the Project Co-ordinator in Baku, ensuring that the new mandate prioritizes Azerbaijan’s implementation of its human dimension commitments.
- Explore ways of supporting the work of the RFOM and holding the Azerbaijani government accountable for fulfilling its media freedom obligations.
- Engage more directly with local civil society representatives on Azerbaijan’s implementation of its human dimension commitments.



- Facilitate dialogue between local civil society representatives and the government to encourage greater accountability in fulfillment of Azerbaijan's human dimension commitments.
- Strengthen communications between ODIHR and the Azerbaijani government and publicize ODIHR's efforts to ensure Azerbaijan's implementation of its human dimension commitments.
- Foster debate at the OSCE Parliamentary Assembly on human rights issues in Azerbaijan, starting with a discussion on the body's failure to monitor Azerbaijan's presidential election, in contrast to its involvement with other elections in the region.



Representative on Freedom of the Media, Dunja Mijatović and President of Azerbaijan Ilham Aliyev. Photo: [www.president.az](http://www.president.az)

Cover photo: Heads of State and Government during the family photo session before the opening of the OSCE Summit in Astana, 1 December 2010. Source: [www.president.az](http://www.president.az)



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This report has been published thanks to generous support from the International Media Support (IMS).