

Office for Democratic Institutions and Human Rights

REPUBLIC OF AZERBAIJAN

PRESIDENTIAL ELECTION October 2013

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT 17-21 June 2013



Warsaw 12 July 2013

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REPUBLIC OF AZERBAIJAN PRESIDENTIAL ELECTION October 2013

OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of an invitation to observe the upcoming presidential election and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to Baku from 17 to 21 June 2013. The NAM included Richard Lappin, OSCE/ODIHR Senior Election Adviser, Raul Mureşan, OSCE/ODIHR Election Adviser, and Radivoje Grujić, OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the election. Based on this assessment, the NAM should recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming election, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions and the election administration, as well as with representatives of political parties, media, civil society, and the resident international community. A list of meetings is annexed to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs and the OSCE Office in Baku for their assistance and co-operation in organizing the NAM. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM.

II. EXECUTIVE SUMMARY

The presidential election is expected to be called for mid-October 2013, in line with constitutional requirements, although the date has yet to be formally announced. If no candidate receives an absolute majority of votes in the first round, a second round is held between the two candidates who receive the most votes. The OSCE/ODIHR NAM was informed by the ruling New Azerbaijan Party (YAP) that they will nominate the incumbent president for a third term, while several opposition groups that came together in a National Council of Democratic Forces intend to nominate a joint candidate.

Azerbaijan has a strong presidential system in which the executive branch exercises wide authority relative to the legislative branch. Among other responsibilities, the president appoints and chairs the Cabinet of Ministers. The majority of seats in the unicameral parliament are held by the YAP, and the second largest parliamentary group is composed of independent deputies, who are not affiliated with a political party but usually vote in support of the ruling party.

Elections are conducted by a three-tiered election administration comprised of the Central Election Commission, 125 Constituency Election Commissions, and some 5,300 Precinct Election Commissions. The Central Election Commission is composed by parliament; one third each is nominated by the parliamentary majority, minority, and independent deputies. By law, all chairpersons are nominated by the parliamentary majority. Several OSCE/ODIHR NAM interlocutors stated that this formula, in practice, gives pro-government forces control of all commissions, undermining confidence in the impartiality of the election administration.

Concerns were also raised with respect to election day procedures, including the vote count and tabulation.

Presidential elections are primarily regulated by the Election Code and the Constitution. Recent amendments to the Election Code removed the possibility for candidates to receive state funding for their campaign, reduced the campaign period from 28 to 23 days, and shortened the adjudication period for complaints and appeals. In 2009, the Constitution was amended, removing the limitation of two consecutive terms for the presidency, thereby allowing the incumbent president to stand for a third consecutive term.

All citizens over 18 years of age have the right to vote, except for those recognized as incapable by a court decision. Voter registration is passive and the CEC maintains an integrated, nationwide voter list. According to the CEC, there are currently some 4.9 million registered voters, which differ significantly from the some 6.4 million citizens of voting age recorded by the State Statistics Committee.

Candidates may be nominated by registered political parties, coalitions of political parties, or independently. Each potential candidate must submit 40,000 signatures of registered voters. Several OSCE/ODIHR NAM interlocutors raised concerns about how authorities would interpret certain eligibility criteria, including residency requirements, and raised doubts about the fairness of the signature verification process. The authorities stated to the OSCE/ODIHR EOM NAM that they would hold to the tenets of the law.

A number of OSCE/ODIHR NAM interlocutors indicated that they face significant challenges with respect to the exercise of fundamental freedoms in the pre-election period. They cited limitations on the ability of political parties and citizens to freely express political views due to restrictions on the freedom of assembly and the freedom of association. Several parties informed the OSCE/ODIHR of difficulties in securing office space and meeting venues. One nominated opposition candidate has been in pre-trial detention since January 2013 and another opposition leader has been unable to travel abroad since 2005 as he has been denied a passport.

Several OSCE/ODIHR NAM interlocutors stated that despite the existence of several television stations with national coverage, citizens have limited access to diverse political views. While print media is more diverse, it has a limited circulation. Detentions, defamation lawsuits and other forms of pressure on journalists create an atmosphere that is not favorable to the free expression of ideas. On 4 June 2013, criminal defamation provisions were extended to online expression. The law provides for a total of six hours of free airtime on Public Television during the campaign, which is divided equally between registered candidates.

Decisions and actions of election commissions that violate electoral rights can be challenged at the higher election commission by a broad range of electoral stakeholders. Decisions on complaints as well as decisions and actions of the CEC, can be appealed to the Court of Appeal and, in turn, to the Supreme Court. Complaints and appeals are to be decided within two days if filed within 30 days of election day, and on the same day if a complaint is filed on election day.

In accordance with OSCE commitments, the law provides for access of citizen and international observers. Several domestic organizations plan to conduct long-term observation activities. The Election Monitoring and Democracy Studies Center plans to conduct parallel vote tabulation, but has so far been denied registration as an organization.

All OSCE/ODIHR NAM interlocutors expressed support for an OSCE/ODIHR election observation mission. Representatives of official bodies emphasized that the electoral process would be transparent and that observation by the OSCE/ODIHR and any recommendations for potential improvement of the process would be welcome. Other interlocutors requested that the OSCE/ODIHR deploy a large number of observers to cover all stages of the electoral process. Based on the findings of this report, the OSCE/ODIHR NAM recommends the deployment of an election observation mission for the upcoming presidential election. In addition to a core team of experts, the OSCE/ODIHR recommends the secondment of 30 long-term observers and 280 short-term observers from OSCE participating States.

III. FINDINGS

A. BACKGROUND

Azerbaijan has a strong presidential system in which the executive branch exercises wide authority relative to the parliament. Among various responsibilities and powers, the president appoints and chairs the Cabinet of Ministers, and appoints the executive authorities at central and regional level. The president also proposes the judges of the Constitutional Court, Supreme Court, Economic Court, and other courts, as well as the general prosecutor to the parliament.

The New Azerbaijan Party (YAP in its Azeri acronym), chaired by incumbent president Ilham Aliyev, is the largest party in the country and holds the majority of seats (71) in the 125-member unicameral parliament. The second largest parliamentary group is composed of 39 independent deputies, who are not affiliated to a political party but usually vote in support of the ruling party. There are several other parties in the parliament, as well as prominent non-parliamentary opposition parties such as the Musavat Party and the Azerbaijan Popular Front Party. In 2009, the REAL Movement was formed as an opposition political grouping.

The authorities underlined that the election will take place in the context of the ongoing conflict with Armenia and the occupation of a sizeable part of the territory of Azerbaijan. They noted that the large number of internally displaced persons complicates the administration of elections.

The OSCE/ODIHR has observed a number of elections in Azerbaijan since 1995.² The most recent OSCE/ODIHR EOM for the 7 November 2010 parliamentary elections found that "[while] the elections ... were characterized by a peaceful atmosphere and all opposition parties participated in the political process, the conduct of these elections overall was not sufficient to constitute meaningful progress in the democratic development of the country... Certain conditions necessary for a meaningful and competitive election were lacking... The fundamental freedoms of peaceful assembly and expression were limited and a vibrant political discourse facilitated by free and independent media was almost impossible. ... Overall, these elections failed to meet a number of key OSCE commitments for democratic elections and important elements of Azerbaijani domestic legislation".

All previous OSCE/ODIHR reports on Azerbaijan are available at: http://www.osce.org/odihr/elections/azerbaijan.

Other parliamentary parties include: Civil Solidarity Party – 3 deputies, Civil Unity Party – 1 deputy, Great Creation Party – 1 deputy, Hope (UMID) Party – 1 deputy, Justice Party – 1 deputy, Motherland Party – 2 deputies, Party of Democratic Reforms – 1 deputy, Social Welfare Party – 1 and United Azerbaijan Popular Front Party – 1 deputy. There are 3 deputies with not indicated party affiliation.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Presidential elections are primarily regulated by the Election Code and the Constitution. The legal framework also include the Law on the Freedom of Assembly, the Law on Radio and Television Broadcasting, the Code of Civil Procedures, relevant provisions of the Criminal Code and the Code of Administrative Offences, as well as regulations of the Central Election Commission.

The president is directly elected by popular vote for a five-year term by the absolute majority of votes cast. In the event that no candidate receives more than half of the votes, a second round is held on the second Sunday after the first round between the two candidates with the highest number of votes. Constitutional amendments in 2009 removed the limitation for a president to serve no more than two consecutive terms. As such, the incumbent president can run for a third mandate in the upcoming election. The Council of Europe's Commission for Democracy through Law (Venice Commission) stated that "explicit constitutional limitations on the successive terms of a president are particularly important in countries where democratic structures and their cultural presuppositions have not yet been consolidated. In the opinion of the Venice Commission, the elimination of the present limitation ... would therefore constitute a serious set-back on Azerbaijan's road to a consolidated democracy". The Azerbaijani authorities stated that the removal of limitations on presidential terms reflects a societal need that was subject to a national referendum, which confirmed this constitutional change.

The Election Code was amended by parliament in June 2010, April 2012, and April 2013. The amendments removed the possibility for candidates to receive state funding for their campaign, and shortened the campaign period from 28 to 23 days. Several OSCE/ODIHR NAM interlocutors stated that shortening the campaign period by five days reduces the time period for candidates to reach out to voters. Although the adjudication period for complaints and appeals was reduced, no other recommendations previously made by the OSCE/ODIHR have been addressed in the law.

C. ELECTION ADMINISTRATION

The election administration consists of three levels: the Central Election Commission (CEC), 125 Constituency Election Commissions (ConECs), and some 5,300 Precinct Election Commissions (PECs). Additional PECs will be established in Azerbaijan's diplomatic missions and consulates to facilitate out-of-country voting.

All election commissions are permanent bodies appointed for five-year terms. CEC members are elected by parliament, ConECs are appointed by the CEC, and PECs by the relevant ConECs. The 18-member CEC is composed by parliament; one third of members each are proposed by the parliamentary majority, minority, and by independent deputies. By law, the chairpersons of all election commissions are nominees of the parliamentary majority. Composition of the election administration remains a contentious issue and several OSCE/ODIHR NAM interlocutors expressed concerns with the formula, stating that in practice it provides pro-

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Article 178.1 of the Election Code provides that "election day shall be held on the Wednesday of the third week of October of the last year of the president's term of office as determined by the Constitution". Article 8.2 states that election day cannot be on a non-working day. Article 8.1 states that elections shall be announced at least 60 days before election day.

Venice Commission opinion on amendments to the Constitution of the Republic of Azerbaijan, paragraph III A. See: http://www.venice.coe.int/webforms/documents/CDL(2009)026-e.aspx.

government forces with a decisive majority in all commissions and undermines confidence in the impartiality of the election administration. Concerns were also raised with respect to election day procedures, including the vote count and tabulation.

The CEC is responsible for the overall conduct of elections. CEC duties include the compilation of a nationwide voter list, candidate registration, supervision of campaign finance obligations, regulation of air time for candidates on public media, and accreditation of citizen and international observers, as well as exit poll organizations. The CEC also serves as the second instance authority for complaints and appeals submitted to the ConECs.

The CEC informed the OSCE/ODIHR NAM that preparations for the presidential election have been ongoing since the beginning of the year, including the preparation of instructions and voter information. The CEC is currently identifying premises for polling stations and informed the OSCE/ODIHR NAM of its intention to install web cameras in a number of polling stations yet to be determined to allow the public to follow voting and counting procedures via the internet.

D. VOTER REGISTRATION

All citizens over 18 years of age have the right to vote, except for those recognized as incapable by a court decision. Voter registration is passive and the CEC maintains an integrated nationwide voter list based on local residency data provided by the heads of relevant executive authorities and municipalities or military units. Voter lists are updated annually on 30 May by PECs and updated no later than 25 days before election day. From this date until and including election day, voters can be added to supplementary voter lists at PECs upon presentation of proof of residency. Citizens are able to check their registration at any time, through the CEC website, by telephone, or in person at PECs.

According to the CEC, there are currently some 4.9 million registered voters. However, several OSCE/ODIHR NAM interlocutors raised concerns about the accuracy of the voter lists, noting that this figure differs significantly from data provided by the State Statistics Committee, which indicates that the population over the age of 20 years is around 6.4 million.⁵ According to the CEC, this difference derives from the residency requirement for the inclusion of voters in the voter list.⁶

E. CANDIDATE REGISTRATION

In addition to the requirements for being a voter, candidates for president are required to be at least 35 years of age, permanently resident in Azerbaijan for at least 10 years, without dual citizenship, without liabilities before other states, without a previous conviction for a serious crime, and with a university degree. The requirement that a candidate possess a university degree challenges international standards on elections in respect of non-discrimination.

Candidates may be nominated by registered political parties, coalitions of political parties, or by independent candidates nominated by a group of voters or through self-nomination. The period

See: http://www.stat.gov.az/source/demoqraphy/indexen.php. Disaggregated data for the 15-19 age group is not available; the figure of voting age citizens is thus likely to be higher.

Article 47.2 of the Election Code provides that "a voter may be included in the Voter's List under the relevant precinct on the basis of the voter's permanent place of residence (i.e. the place a voter has resided for at least 6 out of 12 months prior to the announcement of elections) as determined by the body responsible for recording citizens' place of residence or place of stay."

of candidate registration begins after the election is formally called and lasts for 35 days. Each potential candidate must submit 40,000 signatures of registered voters, with a minimum of 50 signatures from at least 60 constituencies. A voter is not allowed to sign in support of more than one candidate.

Opposition parties and several other OSCE/ODIHR NAM interlocutors raised concerns about how authorities would interpret certain conditions for candidacy, such as residency requirements and having no liabilities before other states. They also expressed concerns about the signature verification process and that some candidates may not be registered, either because of a selective interpretation of the law or because legitimate signatures will be dismissed as falsified. The authorities stated to the OSCE/ODIHR NAM that they would hold to the tenets of the law.

For the upcoming election, several opposition parties and a number of civil society activists formed the National Council of Democratic Forces (NCDF), with the intention to propose a joint opposition candidate. On 2 July, the NCDF announced Rustam Ibrahimbeyov would stand as their candidate. The YAP informed the OSCE/ODIHR NAM that its congress nominated the incumbent president and party chairperson, Ilham Aliyev, as its candidate.

The announced nominee for presidential candidate of the REAL Movement, Ilgar Mammadov, was arrested in January 2013 in connection with public disorder in the town of Ismayili and has since been in pre-trial detention. Mr. Mammadov has lodged a case against Azerbaijan with the European Court of Human Rights. While pre-trial detention does not exclude the registration of a candidate, it is unclear how a person in detention can collect signatures and campaign, and how the person would be duly installed, should they be elected.

F. CAMPAIGN AND CAMPAIGN FINANCE

Recent amendments to the Electoral Code reduced the official campaign period from 28 to 23 days. All political parties met with by the OSCE/ODIHR NAM stated their intention to actively participate in the election and that they are preparing their campaign strategies. The YAP informed the OSCE/ODIHR NAM that they will focus on the record of the incumbent president, while opposition parties stated that they will target voters dissatisfied with the current political context and emphasize that they are united behind a joint candidate. The parties stated that they plan to campaign nationwide, primarily through meetings with citizens and door-to-door canvassing. While all parties stated their intention to use their share of free airtime on the public broadcaster, concerns were noted about the lack of genuine debates in broadcast media.

A number of OSCE/ODIHR NAM interlocutors stated that they face significant challenges with respect to the exercise of fundamental freedoms in the pre-election period. They cited limitations on the ability of political parties and citizens to freely express political views due to restrictions on the freedom of assembly and the freedom of association, as well as a restrictive media environment. Although certain legal measures are in place, concerns continue to be raised about possible voter intimidation and misuse of state resources.⁸

Representatives of opposition political parties and civil society stated that executive authorities regularly deny authorization for public meetings on various grounds and, when approved,

Article 8.1 of the Election Code stipulates that elections shall be announced at least 60 days prior to election day.

Article 55.2 and 115 of the Election Code and Article 308 of the Criminal Code. Presidential Decrees from 11 May and 25 October 2005.

restrict meetings to specific venues on the outskirts of towns and cities. Representatives of the ruling party and the CEC stated that, countrywide, there are more than 5,000 pre-authorized venues for holding campaign events and that venues are easily accessible. In contrast to opposition claims, they also stated that organizers do not need approval to hold a meeting, and only need to notify the authorities about the date, location, and number of participants.

Several opposition representatives also informed the OSCE/ODIHR NAM that they have difficulties securing office space, as owners are not willing to lease properties to them due to pressure from the authorities. Only the Musavat Party has an office in the capital. They also stated that their activities are regularly restricted in the regions by law enforcement agencies, including those held in private houses and premises. Ali Kerimli, the leader of the Azerbaijan Popular Front Party, is unable to travel abroad as he has not been issued a passport since 2005.

Campaign finance regulations are contained in the Election Code. There are no provisions for public campaign financing and candidates must rely on private financing. Each candidate is obliged to open a special campaign account in a bank determined by the CEC at least 24 hours prior to the start of collection of voters' signatures. Contributions are limited at AZN 3,000 per individual, AZN 50,000 per legal entity, and AZN 250,000 from the nominating party or coalition, with a maximum total of AZN 10 million per candidate. 9 Contributions from foreign countries and citizens, international organizations, state bodies and municipalities, charitable organizations and anonymous entities are prohibited. Candidates should report to the CEC on campaign finance contributions and expenditures three times: an initial report at the time of registration; an interim report between 10 and 20 days prior to election day; and a final report no later than 10 days after the publication of the final election results.

G. MEDIA

Despite the existence of several television stations with national coverage, several OSCE/ODIHR NAM interlocutors stated that citizens have limited access to impartial information and diverse political views in broadcast media, particularly outside of the campaign period. While the print media is more diverse, with some opposition-oriented or independent newspapers, it has a limited circulation and is not widely available in the regions. Social media, such as Facebook and YouTube, are increasingly used as a source of political information in urban areas.

Detentions, defamation lawsuits and other forms of pressure on journalists still affect the freedom of the media and create an atmosphere that is not favorable to the free expression of ideas. On 4 June 2013, the president promulgated amendments to the Criminal Code that extended the application of criminal defamation provisions to online expression. The OSCE Representative on Freedom of the Media expressed serious concerns about this development. 10 Additionally, on 13 June, the OSCE Representative on Freedom of the Media reported to the Permanent Council on "recent negative developments regarding media freedom and freedom of expression in Azerbaijan," noting criminal sentences and pressure against journalists. 11 The Election Code regulates the conduct of media during elections, obliging the Public Broadcaster

Approximately AZN 1 = EUR 1.

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The OSCE Representative on Freedom of the Media stated that "these amendments drive Azerbaijan even OSCE's recommendations to decriminalize defamation". further away from the http://www.osce.org/fom/102651.

¹¹ The OSCE Representative on Freedom of the Media Regular Report to the Permanent Council, 13 June 2013. See: http://www.osce.org/fom/102651.

(ITV) to create equal conditions for registered candidates and to allocate free airtime to them. ITV informed the OSCE/ODIHR NAM that free airtime will be divided equally among registered candidates on the basis of participation in debates rather than through separate candidate presentations. While rules are provided for the purchase of paid political advertising, most political parties noted that they are unlikely to make use of this option due to high costs and a reluctance of media to broadcast or publish such adverts. The CEC oversees compliance of media coverage of the elections through the establishment of a media working group.

H. COMPLAINTS AND APPEALS

Complaints and appeals can be filed by voters, candidates, political parties and blocs and their representatives, observers, and election commissions. Actions, decisions as well as omissions of election commissions that violate electoral rights can be challenged at the higher election commission. Decisions of election commissions upon complaints, as well as decisions and actions of the CEC can be appealed to the Court of Appeal. Decisions of the Court of Appeal can be further appealed to the Supreme Court.

In 2012, the Election Code was amended, reducing the time for adjudication of complaints and appeals during election periods from three to two days if a complaint is filed within 30 days of election day. Decisions are to be adopted on the same day if a complaint is filed on election day or afterwards. The investigation period may be extended for three days if the complaint is filed up to 30 days before election day, but only for two days outside of this time period.

The Election Code provides for the creation of expert groups within the CEC and ConECs to investigate complaints and report to the respective commission on individual cases. The rules for composing the expert groups are determined by the CEC, and several OSCE/ODIHR NAM interlocutors expressed concerns that, in practice, these groups reflect the partisan interests of commission members and do not include independent experts. The CEC informed the OSCE/ODIHR NAM that the work of the expert groups will be open to all interested parties, including civil society.

I. ELECTION OBSERVATION

In accordance with OSCE commitments, the law provides for access of citizen and international observers, as well for authorized representatives of registered candidates. Several domestic organizations plan to conduct long-term observation activities. The Election Monitoring and Democracy Studies Center (EMDSC) plans to conduct parallel vote tabulation on a random sample of polling stations. EMDSC has so far been denied registration as an organization, which challenged the denial of registration to the European Court of Human Rights in November 2011. The Azerbaijani Union of Journalists for New Generation intends to conduct media monitoring during the campaign. The authorities did not comment to the OSCE/ODIHR NAM on this issue.

IV. CONCLUSIONS AND RECOMMENDATION

All OSCE/ODIHR NAM interlocutors expressed support for an OSCE/ODIHR election observation activity. Representatives of official bodies emphasized that the electoral process would be transparent and that observation by the OSCE/ODIHR and any recommendations for potential improvement of the process would be welcome. Other interlocutors requested that the OSCE/ODIHR deploy a large number of observers to cover all stages of the electoral process,

with a particular emphasis on the work of the election administration and candidate registration, respect of freedom of assembly and media coverage, as well as election day procedures, including the vote count and tabulation of results.

Based on the findings of this report the OSCE/ODIHR NAM recommends the deployment of an election observation mission for the upcoming presidential election. In addition to a core team of experts, the OSCE/ODIHR will request the secondment by OSCE participating States of 30 long-term observers to follow the election process countrywide, as well as 280 short-term observers to follow election day procedures, including voting, counting of votes and tabulation of results.

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ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs

Mahmud Mammad-Quliyev, Deputy Minister

Zaur Ahmadov, Head, Department of Human Rights, Democratization and Humanitarian Issues Leyla Hasanova, Third Secretary, Department of Human Rights, Democratization and Humanitarian Issues

Central Election Commission

Mazahir Panahov, Chairperson Rovzat Gazimov, Head of Secretariat

Baku Court of Appeal

Iman Naghiyev, Chairperson

Political Parties and Movements

Ali Karimli, Chairperson, Azerbaijan Popular Front Party

Isa Gambar, Chairperson, Musavat Party

Gulagha Aslanli, Deputy Chairperson, Musavat Party

Eldar Namazov, Executive Secretary, National Council of Democratic Forces

Ali Ahmadov, Executive Secretary, New Azerbaijan Party

Siyavush Novruzov, Deputy Executive Secretary, New Azerbaijan Party

Natiq Jafarli, REAL Movement

Iqbal Aghazade, Chairperson, Umid Party

Public Broadcaster Radio and Television (ITV)

Elshad Guliyev, Director

National Television and Radio Council

Nushiravan Maharramli, Chairman

Civil Society

Anar Mammadli, Election Monitoring and Democracy Studies

Asabali Mustafayev, Human Rights Lawyer

Alasgar Mammadli, IREX

Hafiz Hasanov, Law and Development Public Union

Intigam Aliyev, Legal Education Society

Rashid Hajili, Media Law Institute

Mehman Aliyev, Turan News Agency

Arif Aliyev, Yeni Nesil Journalist Union

International Community

H.E. Ambassador Koray Targay, Head of the OSCE Office in Baku

H.E. Ambassador Olexandr Mischenko, Embassy of Ukraine

Toralf Pilz, Charge d'Affaires, European Union Delegation to Azerbaijan

Elsa Pignol, Counselor, French Embassy

Frederik Hanke, First Secretary, German Embassy

Tugba Gunes, Norwegian Embassy

Bahar Doğan, Second Secretary, Turkish Embassy

Jeff Khurgel, Second Secretary for Political Affairs, United States Embassy