The Formal Political System in Azerbaijan

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Abstract

The article provides a brief overview of the formal political system in Azerbaijan and its practical application. After analyzing Azerbaijan's constitutional development, it examines in detail the main formal political institutions, such as the presidency, the executive branch (consisting of the government and administration), the parliament, the political party system, the electoral system, civil society and the mass media. In presenting information about the entire formal political system of Azerbaijan in a systematic manner, the study seeks to show how the individual institutions are intertwined. It first and foremost describes how the institutions and rules are formally laid out; it also analyses how these formal institutions are manipulated in practice to protect the ruling elite from any democratic accountability or change of power theoretically provided for by the constitution.

Introduction

Azerbaijan's constitution lists all of the fundamental human rights and freedoms and clearly defines almost all democratic institutions. Hence, the document is generally consistent with the formal (Western) criteria for a democratic constitution. However, the practical implementation and interpretation of these fundamental rights depends overwhelmingly on the will and discretion of the executive branch. Thus, Western analysts often refer to Azerbaijan as a "facade democracy".

This analysis looks at the "facade", as it tells us something about the country's political system. First, the intention to keep the facade in place can put restrictions on the political leadership. Second, how the political elites deal with the facade is very telling about their understanding of democracy. And third, elements of the facade sometimes perform functions which are different from the ideas laid out in the democratic constitution. A common example is the use of parliamentary membership in order to gain immunity from legal prosecution.

However, this study does not claim to analyze the informal rules and networks, which seem to determine politics in Azerbaijan. That is the aim of the following contribution by Hannes Meissner.

Constitutional Development

Azerbaijan declared its independence in October 1991 under a pro-Moscow communist leadership that passed the Constitutional Act of Independence of the Republic of Azerbaijan to supplement the 1978 Constitution of the Soviet Socialist Republic of Azerbaijan. In the spring of 1992, the newly-formed Azerbaijan Popular Front (APF) forcibly took power. Subsequently, the Popular Front won the first post-Soviet elections and its leader, Abulfez Elchibey, was elected president on 7 June 1992.

Despite a war with Armenia, Azerbaijan under the Elchibey government is widely credited with developing in a democratic direction. Yet due to the Popular Front government's disastrous performance in the war over Nagorno-Karabakh and its general ineptitude, this democratic process came to an abrupt halt in June 1993, when a coup d'état led by a rebellious army commander brought about the return of former Politburo member and KGB general Heydar Aliyev. Aliyev became speaker of parliament in a dubious vote, winning a position that put him next in line to the presidency. When President Elchibey flew to Azerbaijan's autonomous republic Nakhichevan as renegade troops closed in on Baku, Aliyev became acting president in accordance with the 1978 constitution. In this capacity, Aliyev held a vote of no confidence in President Elchibey and unseated him. In the following (uncontested) presidential election of October 1993, Aliyev was elected to the presidency.

After 1993, the Aliyev government used elements of democratic change to camouflage its efforts to consolidate power and weaken its opponents. The legislative changes included some amendments to the 1978 constitution and laws on political parties and public organizations.

In 1995, President Aliyev institutionalized his rule by drafting a new constitution with provisions for a strong executive branch. The 1995 constitution proclaimed the Republic of Azerbaijan a democratic and secular state committed to the rule of law. Articles 1 to 3 stipulated that the people of Azerbaijan are the sole source of state power; as such, they are able to exercise their power through free elections and referenda, which are the only method of approving amendments to the constitution. At the same time, the constitution provides for a strong executive with extensive powers. With that, the practical implementation and interpretation of the constitution depends overwhelmingly on the will and discretion of the executive branch.

The constitutional amendments of 2002 appear to be designed to enable Heydar Aliyev's son Ilham (prime minister at the time) to succeed him as president of Azerbaijan. Whereas the constitution of 1995 speci-

fied that if the president stepped down or died in office, presidential powers were to be passed to the speaker of parliament until a new election were held within three months, under the new amendment this responsibility fell to the prime minister. Additionally, to win a presidential election in the first round, a candidate needs to win only a simple majority, rather than the two-thirds majority required under the 1995 constitution. Heydar Alieyev died in 2003 and Ilham swiftly replaced him.

Constitutional amendments in March 2009 further strengthened the president's grip on power by allowing the same person to occupy the presidency of Azerbaijan for more than two terms.

The President

The president of the Azerbaijani Republic is elected in general elections for a term of five years and there currently are no term limits. The president is ultimately responsible for both domestic and foreign affairs. In detail, the powers of the president include the right to:

- call for new elections of parliament,
- appoint and dismiss both the prime minister (with the consent of parliament) and the members of the cabinet (after consulting the parliament),
- initiate legislation and sign laws into force,
- issue decrees,
- establish and control executive bodies on all administrative levels,
- submit the budget for parliamentary approval,
- approve economic and social programmes to be implemented by the government,
- propose candidates for the Constitutional, Supreme, Arbitrage and other courts, the prosecutor general and the Board of the Central Bank,
- appoint and dismiss senior commanders of the armed forces,
- impose a state of emergency or martial law.

The president can only be removed from office if he is physically incapacitated or has committed a "serious crime". Removal requires the approval of 95 of the 125 members of parliament and of the Supreme Court.

The 1995 constitution contained formal provisions stipulating the separation of power. However, the executive authorities, and especially the president, have great powers and little accountability. One of the executive's tools is the presidential decree, which is exempted from any oversight and has been a frequently used governance mechanism in Azerbaijan. The presidential administration has also monopolized legislative initiative.

Executive Branch

The Constitution stipulates that the president heads the executive branch of government. The cabinet of ministers is supposed to organize and execute the powers of the president; it is responsible and accountable only to the president. The prime minister is nominated by the president and has to be approved by the parliament. If the parliament rejects the president's candidate(s) three times, the president can nominate the prime minister without the parliament's approval. The powers of the cabinet of ministers include:

- drafting the state budget which is then submitted to the president for approval;
- guaranteeing the execution of the state budget;
- guaranteeing the execution of the state economic and social programmes;
- leading the ministries and other central administrative bodies and annulling their decisions;
- deciding other issues at the president's discretion.

However, the key players are typically the president and his team of advisers; the cabinet usually remains in the background. Until 2002, the post of the prime minister was largely ceremonial, since most of the power is concentrated in the presidency. Today the prime minister still has little authority but is first in line to succeed the president.

Parliament

The 1995 constitution provided for the independence of the legislative branch from the executive authorities. The unicameral parliament (Milli Majlis) then consisted of 125 members elected through a mixed majority-proportional electoral system**;** 100 members were elected in local contests (single-seat constituencies) while the remaining 25 were chosen through national party lists. Parliamentary elections were held every five years.

The constitutional amendments in 2002 eliminated the use of proportional representation in the parliament; now all 125 seats are elected using the majoritarian system. As a result, the already fragmented and weak opposition parties are further under-represented.

Formally, the parliament is independent from the executive authorities: it has the right to approve nominations of public officials and even to impeach the president. It can initiate laws and resolutions within its own competence and, among other things, is entitled to appoint judges nominated by the president. One of its key powers is the right to approve the state budget; by doing this, the Milli Majlis can theoretically influence and control the executive authorities.

However, since 1995 the Milli Majlis has gradually lost its vigor and independence; members of the opposition have been a minority and thus have not been able to influence the executive authorities in any significant way. The parliament has been dominated by the president's party and other "independent" supporters; most of the time, it simply passes the bills proposed by the

executive after a perfunctory debate. Since the presidential administration has monopolized legislative initiative, in most cases, the Presidential Commission on Legal Reform drafts a law and then hands it over to the respective parliamentary commission. Accordingly, there is no lobbying of laws in the parliament.

Political Parties

Azerbaijan's ruling elite is based on several networks that are largely organized along regional and patronage relationships. These networks compete for control of a pyramidal distribution structure that allows substantial funds to be skimmed from the oil business. For that reason, party formation in Azerbaijan is also to a large extent based on regional networks and loyalties.

The government bloc consists of the ruling New Azerbaijan Party (NAP) and a number of smaller political formations tied to the regime. NAP represents the political and economic interests of the ruling Nakhichevan and Yerai regional networks, which have dominated Azerbaijani political life for decades. A significant number of NAP cadres are well-entrenched and experienced functionaries who served under Heydar Aliyev during his tenure as Communist Party chief in the 1970s. In addition to this "old guard", the NAP also has a reformist wing, often foreign-trained and grouped around the current president, Ilham Aliyev. In 1999, the reformist wing emerged triumphant at the NAP's Party Congress and has consolidated its hold on the party.

A diversity of opposition parties has gradually developed in Azerbaijan. However, few of them have any real influence on political life because most of them are small, underfunded, and not well known to the public. Most of the major opposition parties have their roots in the Popular Front that was active during the early years of independence; the differences among them centre more on the personalities of their leaders than on political ideology. They all are centre-right and/or nationalistic, secular, and broadly share the Aliyev regime's pro-Western foreign policy.

Azerbaijani politics remains characterized by personalities rather than by its weak and divided political parties. The populace is largely unfamiliar with the parties and therefore offers only minimal support. Adding to the voters' bewilderment is the government's practice of establishing alternative party organizations of the same name under their control in order to neutralize the "real" opposition parties.

Electoral System

The constitution stipulates that members of parliament as well as the president should be elected in *general*, *direct, free, equal* and *secret* elections. For parliamentary and presidential elections, a voter turnout threshold of 50 percent was previously required to validate the election, but this threshold was abolished in 2002.

Presidential candidates have to present a list of 40,000 signatures of registered voters from at least 60 of Azerbaijan's 125 constituencies in order to register with the Central Election Commission (CEC). The CEC checks the accuracy of the signatures and approves the registration of candidates (or parties in the case of parliamentary elections). The opposition leaders have continually criticized the government's refusal to allow the opposition to have equal representation on electoral commissions.

In previous presidential elections, a candidate needed to win two-thirds of the popular vote to avoid a runoff with the second place candidate. The constitutional amendments in 2002 changed this provision, however: a simple majority is now sufficient to win a presidential election in the first round.

So far, according to the OSCE and international election observers, both parliamentary and presidential elections have been neither free nor fair; they were characterized by a wide variety of serious irregularities and intimidation during the election campaign as well as on election day. The president and the ruling NAP party also benefited from biased coverage in the country's media in the run-up to the election. Authorities have repeatedly interfered with the opposition's attempt to collect the necessary signatures for standing in the elections. Thus, many of the candidates and political parties were barred—on highly questionable grounds—from participating in the elections by the CEC. During the elections, incidents of multiple voting (ballot stuffing) and of violence against oppositional candidates were reported; additionally, voter registration lists were probably forged and voter participation figures inflated in order to satisfy the requirement for voter turnout. Since members of the ruling party made up the majority of the central and local electoral commissions, they were able to organize the nationwide falsification of election results.

In August 2008, several opposition parties decided to boycott the 2008 presidential election. The opposition's criticism focused on three major points leading to the boycott: (1) the composition of the CEC and the 125 constituency election commissions; (2) the reduction of the official campaign period from 60 to 28 days; and (3) the restriction of the freedom of assembly.

During the campaign, media coverage was dominated by extensive reporting on the president and the ruling party. The lack of prominent opposition candidates certainly made it easier for the regime to create the impression that there was no real evidence of electoral fraud during the 2008 presidential election.

At the recent parliamentary election in November 2010, the ruling NAP won a landslide victory, while the opposition failed to win a single seat. This outcome again was largely achieved through the use of administrative resources and biased media coverage.

Mass Media

Azerbaijan's constitution guarantees freedom of expression and the media and prohibits state censorship. Furthermore, amendments to the "Law on Mass Media" in December 2001 abolished the system of media registration, simplified the establishment of mass media outlets, and removed prohibitions on advertising and financing, which grants media agencies better opportunities to secure operating expenses. However, these reforms are weakly implemented and alone are not sufficient to secure media freedom.

While there are very few formal limitations on the dissemination of information in Azerbaijan, the government maintains a tight hold on the media. It employs numerous methods to limit press freedom and the independence of the media in practice. The most widely used method is economic pressure.

The majority of newspapers in Azerbaijan rely heavily on income from commercial advertisements, but the government discourages private companies from advertising in opposition newspapers. State businesses do not advertise in opposition newspapers. The distribution of opposition publications outside of the capital city of Baku is often obstructed. In general, independent and opposition newspapers struggle financially because of low circulation, limited advertising revenues and heavy fines or imprisonment of their staff for libel.

The majority of the population relies on television news as their main source of information. The broadcast media, however, is either government-owned or linked to the government. Of the 16 television stations, only four broadcast to a national audience and all four of them have clear or likely links to the regime.

Civil Society

The division into insiders and outsiders is a defining feature of the interest representation in Azerbaijan. Special interest groups do not aim to change the political system through lobbying but instead attempt to become part of the system themselves. In other words, the representation of special interest groups is achieved through co-option in the executive branch of government and its administrative bodies.

While civil society organizations and NGOs are officially allowed to operate, their development in Azerbaijan has been impeded by systemic problems: a lack of shared values among group members, limited resources and poor infrastructure (lack of money, organizational and personnel problems, etc.), general social apathy and the gradual elimination of political opportunity structures through government repression. NGO registration, which is an arbitrary and politicized process, was de facto suspended in 2005.

As a result, civil society organizations are not able to hold the government to account or to influence policymaking. The increasingly narrow political space only allows them to pursue so-called "soft issues", such as the status of women's and children's rights.

The only noteworthy exceptions are NGOs working on oil revenues. With Azerbaijan becoming the first country to fulfil the *Extractive Industries Transparency Initiative* (*EITI)* requirements in February 2009, the government has committed to work with civil society and companies on EITI implementation. According to the EITI validation criteria, civil society groups involved in the EITI are free to express opinions on the initiative without undue restraint or coercion.

Conclusion

The ruling elites use the formal political system systematically to hamper the opposition and entrench themselves in power. Accordingly, a legal change of power in Azerbaijan is unlikely. At the same time, this "facade" of democratic institutions provides a reputational fig leaf for foreign governments, investors and donors who deal with Azerbaijan. However, the attention the leadership pays to this fig leaf has clearly been decreasing in recent years.

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Further Reading:
This article is a substantially shortened version of an extensive analysis published as: Andreas Heinrich (2010): Background Study: The Formal Political System in Azerbaijan and Kazakhstan. Bremen: Research Centre for East European Studies (Arbeitspapiere und Materialien – Forschungsstelle Osteuropa, No. 107), available online at http://www.forschungsstelle.uni-bremen.de/images/stories/pdf/ap/fsoap107.pdf