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**Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)**

**Honouring of obligations and commitments by Azerbaijan<sup>1</sup>**

**Information note by the co-rapporteurs on their fact-finding visit to Baku (4-7 February 2008)**

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<sup>1</sup> This information note has been made public by decision of the Monitoring Committee dated 18 March 2008.

## I. INTRODUCTION

1. As co-rapporteurs on the monitoring procedure of Azerbaijan, we visited Baku from 4 to 7 February 2008 with a view to verifying the implementation of Resolution 1545 (2007), ten months after its adoption and six months before the Presidential elections.
2. We met with authorities at the highest level (President of the Republic, Speaker of Parliament, Head of Presidential Administration, various Ministers, Prosecutor General, and Chairman of the Central Election Commission) as well as NGOs and media representatives, political leaders from opposition parties, representatives of the international and diplomatic community. We also visited a number of prisons and met prisoners mentioned in Resolution 1545 (2007) or convicted after its adoption.
3. We focused on three outstanding issues: the human rights situation (in particular freedom of media and of assembly), the issue of alleged political prisoners (and the possible appointment of a special rapporteur on political prisoners) and the preparation of the forthcoming Presidential elections. We also discussed other outstanding issues with respect to the obligations and commitments by Azerbaijan.
4. All these issues are very often intertwined and the democratisation of a society is a complex and long lasting process. We warmly welcome the co-operative attitude of the Azerbaijani authorities and their efforts to create and further strengthen the democratic institutions. We cannot but commend them for the numerous reforms in progress, in areas ranking from the rule of law to the separation of powers.
5. At the same time, we very much encourage the Azerbaijani authorities not to stick to the letter of the law but to focus on its implementation.

## II. MEDIA PLURALISM AND FREEDOM OF EXPRESSION

6. In Resolution 1505 (2006), adopted in June 2006, the Assembly recalled the great concerns it had expressed about violent incidents directed against journalists. It reiterated its concerns in Resolution 1545 (2007). Regrettably, instead of improving, the general environment for the independent media in Azerbaijan keeps deteriorating.<sup>2</sup>
7. All human rights NGOs and media representatives, as well as representatives of political parties from the opposition that we met, spoke about a deterioration of the human rights situation in the country in 2007. According to our interlocutors, the media situation continues to deteriorate ever since the murder of Elmar Huseynov, the editor-in-chief of the Monitor Magazine who was gunned down in March 2005. In 2007, the number of arrests and other types of sanctions applied to journalists, as well as the number of defamation awards under court judgments and their amount have increased significantly compared to previous years.
8. In 2007, there were more than 100 cases when media representatives were taken to court. This indicator is ten times higher than in 2005. The initiators and authors of 90% of claims and accusations against journalists were high-ranking state officials. The local courts sentenced 9 journalists. All these journalists and the bodies for which they work are known for being critical of the government. Five arrested journalists were convicted under Articles 147 (slander) and 148 (insult) of the Criminal Code.
9. Moreover, as far as trials were concerned, human rights and journalists' defenders complained that the procedures were biased.
10. The authorities consider that the problem of journalists' arrests is linked to their lack of professionalism and ethics. Therefore, they do not envisage any legal reform aiming at the decriminalisation of defamation (which they claim exists in other European countries) nor the revision of relevant civil law provisions to ensure respect for the principle of proportionality, as recommended in Resolution 1545 (2007). However, the Azerbaijani authorities welcomed and encouraged the assistance of the Council of Europe and other international organisations in the training of journalists and judges.

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<sup>2</sup> See also the last report from Amnesty international, *Azerbaijan : mixed messages on freedom of expression*, February 2008; <http://www.amnesty.org/en/library/info/EUR55/002/2008>

11. A Presidential pardon decree issued on 28 December 2007 included six journalists, but the two Zahidov brothers (Sakit and Ganimat) and Mr Fatullayev, i.e. the three journalists associated with the most vocal opposition newspapers, did not benefit from it. Moreover, all media representatives we met described the economy as monopolised at every stage to the extent that the lack of free market of advertising in the newspapers hindered the development of a free and pluralist press in the country.
12. On 7 March 2008, Mr Ganimat Zahidov, editor of the leading independent newspaper Azadlyq, was sentenced to four-year term of imprisonment for hooliganism.
13. We urged the Azerbaijani authorities to initiate the legal reform aiming at the decriminalisation of defamation and the revision of relevant civil law provisions to ensure respect of the principle of proportionality as recommended in Resolution 1545 (2007), paragraph 8.2.
14. As regards electronic media pluralism, Azerbaijan is also committed to transforming the national television channel into a public channel managed by an independent administrative board. In June 2007, the Council of Europe addressed an expertise to the Azerbaijani authorities on the draft law on Television and Radio Broadcasting and on the Decree of the President approving regulations of the National Television and Radio Broadcasting Council. The Council of Europe experts welcomed a number of progressive provisions but underlined that the most significant problem with the law is that the state appears to be too involved in broadcasting. The law refers to targeted state programmes and other direct state intervention in broadcasting, including the state ordering special programmes or sponsoring broadcasting. The funding of the Council is directly from the State budget, which leaves the Council open to direct political pressure by government.
15. The Chairman of the Broadcasting Council actually confirmed to us that the situation remains somewhat blurred as the Council is not treated as a public administration body (notably as regards civil servants' increase of salaries) but could not establish its own budget either. He also noted that the Council often invited leaders of political parties to participate in various programmes, but they refused to do so.
16. For their part, media representatives, representatives of the opposition parties and human rights defenders complained that the electronic media were controlled by the Broadcasting Council, which considers it its duty to control the information broadcast on the Internet in order to ensure that regulations and law also apply to this media. They fear that such a control would actually lead to censorship especially since the independence of the Council was subject to doubt. We are particularly concerned about reports on the recently created Co-ordination Council by the Ministry of Communications and Technologies which would be currently working on a limitation plan for Internet access. We share the fear of Mr Osman Gunduz, Chairman of the Internet Forum of Azerbaijan, that such a plan could lead to further restrictions on freedom of expression in the country.

### **III. FREEDOM OF ASSEMBLY**

17. Violations of freedom of assembly in Azerbaijan have been repeatedly and firmly denounced by the Assembly, especially prior to or after elections, and most recently after the parliamentary elections of November 2005. Unacceptable violations of the freedom of assembly were one of the reasons for which the credentials of the Azerbaijani delegation were challenged in 2006.
18. In its Resolution 1545 (2007), paragraph 8.7, the Assembly welcomed the fact that the authorities of Azerbaijan have shown the political will to amend the 1998 law on freedom of assembly and have requested the assistance of the Venice Commission; it urged them to amend now the law in line with the recommendations made by the latter and take appropriate measures to ensure that the implementation of the relevant legislation respects the guarantees of Article 11 of the European Convention of Human Rights as interpreted by the European Court of Human Rights; violations of the freedom of assembly and excessive use of force by law enforcement agents should be stopped; on-going training efforts in this respect are most welcomed.
19. The authorities of Azerbaijan have indeed engaged in co-operation with the Venice Commission on the reform of the 1998 Law on freedom of assembly. The law as it stands today provides for numerous cases of automatic prohibition on holding an assembly. Draft amendments to the 1998 law on freedom of assembly were submitted to the Venice Commission by the authorities. The Venice Commission approved an Opinion on these amendments at its last meeting in December 2007 (CDL-AD(2007)042).

20. The Speaker of the Parliament confirmed to us that the Parliament would soon adopt the draft law, taking into consideration the opinion of the Venice Commission.

21. Our interlocutors representing human rights defenders and opposition parties complained that most public rallies or demonstrations had to be cancelled at the last minute following a decision by the local administration to change the venue for the protest action. In some cases demonstrations were interrupted by the police and the leaders of the group were arrested, in most cases for a short period of time.

22. We hope that once the Parliament will have adopted the revised Law on freedom of assembly, the authorities will focus on its implementation, on awareness-raising measures and they will provide adequate training to the competent authorities. This is crucially important especially with a view to the forthcoming Presidential elections.

#### **IV. FOLLOW-UP TO THE ISSUE OF ALLEGED POLITICAL PRISONERS AND HUMANITARIAN CONCERNS**

##### **1. Recent developments**

23. In Resolutions 1457 (2005) and 1545 (2007), the Assembly concluded that it "[could] not consider the issue of political prisoners to have been finally resolved" and asked the Azerbaijani authorities to take a number of measures in order to find "a speedy and permanent solution to the issue of political prisoners and presumed political prisoners".

24. Our visit took place only few weeks after a motion "on the follow-up to the issue of political prisoners in Azerbaijan" was tabled by several members of the Legal Affairs and Human Rights Committee mid-December 2007. The possible appointment of a special rapporteur on this issue is crucially important for all interlocutors we met and was raised in every single meeting we had.

25. All interlocutors from the authorities' side underlined that the 28 December 2007 Presidential pardon decree was issued after the motion was tabled and allowed the release of 114 persons from serving their remaining sentences while the prison term of 5 prisoners was reduced. The official position remains that all alleged political prisoners appearing on the human rights defenders lists are common law prisoners who have been prosecuted on criminal charges and therefore cannot be released. The authorities considered that the appointment of a special rapporteur on political prisoners would be a blow to relations between the Council of Europe and Azerbaijan. All official interlocutors insisted on the same message: the issue of political prisoners was closed and they did not understand why the PACE would apply such double standards, i.e. talking about political prisoners in Azerbaijan and simultaneously remaining silent on political prisoners in other Council of Europe member states.

26. We attended a meeting of the Task Force on alleged political prisoners on 7 February 2008. This Task Force is in charge of the follow-up given to Assembly Resolution 1457 (2005) and comprises the major NGOs active in the field of human rights, a number of MPs (notably the Chairman and members of the PACE Delegation) and officials from the Presidential Administration, the Ministry of Justice and the Ministry of the Interior.

27. We welcome the constructive and open dialogue with the parliamentary delegation of Azerbaijan to the Assembly. Genuine efforts have been made by the delegation in the search for a final solution to this issue. The December Presidential decree encouraged the Task Force to continue its work and produce further results. However, the Task Force needs to be reinforced and its efficiency increased. We are still expecting the Task Force to produce an up-date of the June 2005 lists indicating to us how many cases have since been resolved. The only figures available today come from human rights defenders' organisations. It is for the Task Force to establish other cases which need consideration, including on humanitarian grounds. The Special Representative of the Secretary General of the Council of Europe in Baku (SRSG) is regularly attending the meetings of the Task Force. The Task Force could consider his assistance in the organisation and follow-up of the meetings and the Assembly could ask the Secretary General to allow the SRSG to report in writing on the Task Force activities to our committee.

28. When adopting its Resolution 1457 (2007), the Assembly had hoped that the Azerbaijani authorities would "find a speedy and permanent solution to the issue of political prisoners", by releasing the remaining political prisoners or by allowing retrials and that they would actually "make use of every legal remedy (amnesty, review of cases by higher-instance courts, conditional release, release for health reasons, pardon) to settle this problem".

29. However, to date, the work of the Task Force has not lived up to expectations: no amnesty law has been adopted nor is being envisaged by the Parliament and, in some cases, prisoners released through Presidential decrees have been re-arrested a few months later. Furthermore, in the particular context of a Presidential election year, numerous arrests of journalists, incidents of intimidation, reports of violence and threats against the opposition and independent media, create a climate of fear and tensions within society.

30. The Pardoning decree of 28 December 2007 led to the release of a number of prisoners. 17 prisoners appearing on the list of human rights defenders were released, including six journalists. However, the 3 journalists working in the most vocal opposition newspapers did not benefit from the decree (two Zahidov brothers and Mr Eynulla Fatullayev). None of the prisoners referred to in Resolution 1545 (2007) has been released either.

31. The main problem in most cases is the lack of transparency and fairness in the court proceedings that undeniably lead to serious concerns as to their compliance with fair trial standards.

32. The serious disfunctioning of the Azerbaijani judicial system (see below) result in the creation of new cases in which dozens or even hundreds of people find themselves charged and tried collectively for offences, such as attempted coups d'Etat, offences against state security or terrorism, which do not always correspond to the facts.

33. Prisoners whose state of health gives cause for concern and to which the Assembly has drawn the authorities' attention on several occasions remain in prison for reasons we fail to understand.

34. Moreover, the strict application of the law on conditional release could enable the immediate release of dozens of prisoners, without even requiring any pardon decree.

35. During our visit, we requested the authorities, in particular the President of Azerbaijan, to consider the release of several prisoners whose names we received from NGOs, including those mentioned in Resolution 1545 (2007) (**Natiq Efendiyev, Rasim Alekperov, Ruslan Bashirli, Ramin Tagiyev**) and/or in the April 2007 report (doc. 11226) (**Sahavat Gumbatov, Akif Huseynov and Telman Ismayilov**). We also urged that the three imprisoned journalists, **Mr Sakit Zahidov, Mr Ganimat Zahidov and Mr Eynulla Fatullayev**, be immediately released. We met most of them in prison.

36. We very much welcome the recent release of two of the above-mentioned prisoners, **Mr Sahavat Gumbatov** and **Mr Ramin Tagiyev** (Vice-Chairman of the *Yeni Fakir* Youth Movement), and hope that we will soon be in a position to welcome the release of the remaining ones, in particular the three journalists and the prisoners mentioned in Resolution 1545 (2007). In this respect, the recent conviction of Mr Ganimat Zahidov to four-year term of imprisonment for hooliganism is regrettably a negative development.

## 2. Meetings with prisoners

37. We were able to visit most of the prisoners we had requested to meet, with the exception of Mr Sakit Zahidov (Mirza Sakit), who was suffering from serious heart problems at the time of our visit and was just about to be transferred to a penitentiary hospital, and Mr Ganimat Zahidov who was held in a pre-trial detention centre.

38. We thank the authorities and especially the Chairman of the PACE delegation, Mr Seyidov, and the Minister of Justice, Mr Fikrat Mammadov, for organising these meetings.

39. **Mr Rasim Alekperov** was arrested in 2000 and sentenced to fifteen-year term of imprisonment on grounds of alleged coup d'état (with Mr Efendiyev and others). He denies any link with Mr Efendiyev and claims he had not been given a fair trial.

40. Mr Alekperov suffers from serious nervous and heart problems. He cannot walk alone (or even dress himself) and he is constantly given help by other prisoners and the prison staff. He had been wounded three times (in 1991, 1992 and 1993) and this continues to make him suffer and restrict his movements.

41. We strongly believe that Mr Alekperov should be released on humanitarian grounds as provided in Article 78 of the Azeri Criminal Code, or should at the very most be subject to alternative measures rather than imprisonment.

42. **Mr Natiq Efendiyev**, who had been considered as a political prisoner by the independent experts of the Secretary General, was released subsequently by a presidential pardon decree in March 2005 and re-arrested a few weeks prior to the parliamentary elections, on 15 October 2005. He was first charged with attempted coup d'Etat with Razul Guliyev but this charge was dropped and on 7 September 2006. He was finally sentenced to five-years term of imprisonment for illegal possession of weapons.

43. We received submissions giving rise to serious doubts regarding the evidence on which his conviction was based.

44. We cannot accept the argument from the authorities claiming that it would not be possible for him to apply for Pardon as he had already been pardoned once. We were informed by human rights NGOs that successive pardons had indeed already occurred in the past.

45. **Mr Ruslan Bashirli** was already visited by the co-rapporteurs during their last visit in 2006. He is one of the two leaders of the *Yeni Fikir* Youth Movement. Mr Ruslan Bashirli (Chairman) was arrested (together with Mr Ramin Tagiyev, Vice-Chairman) on charges under Article 278 of the Criminal Code of "plotting to overthrow the Azerbaijani leadership at the instigation of Armenian intelligence agents", with whom he allegedly met in Tbilisi on 28 and 29 July 2005. On 12 July 2006, Mr Bashirli was sentenced to a seven-year term of imprisonment.

46. Mr Bashirli has complained of ill-treatment, as well as of a number of procedural violations before the trial courts. In comparison to the previous visit by the rapporteurs and his terrible state at the time, Mr Bashirli seemed to have partially recovered from the severe ill-treatment he had suffered upon his arrival in prison. He is regularly under pressure from the prison administration and considers he is treated as strictly as long term sentenced prisoners or recidivists. He is regularly accused of violating the prison regime and sent to isolation cells, where he said he is beaten by prison staff. This time, he also complained about a new form of harassment coming from inmates themselves and he was wondering what the role of the penitentiary administration was in this new development.

47. We are puzzled by the number of procedural violations reported to us prior to and during his trials in court.

48. **Mr Akif Huseynov** was on the list of prisoners given to the authorities by the co-rapporteurs during their November 2006 visit with a request that their release be considered for humanitarian grounds (see Doc. 11226). He was convicted on 17 January 2000 for high treason and espionage activities against the national security of the Republic of Azerbaijan (criminal relationships with the Iranian intelligence service *Ettelaat*) and convicted to eleven years imprisonment. Mr Huseynov contests the facts he is accused of and considers he was not given a fair trial. He now suffers from diabetes and has to provide himself with the treatment.

49. The fact is that Mr Huseynov is eligible for conditional release (under article 76 of Criminal Code) after serving more than two thirds of his sentence. Moreover, his illness also entitles him to be released from prison under Article 78 of the Criminal Code. We see no reason why these provisions are not applied to Mr Huseynov's case.

50. **Mr Sahavat Gumbatov** was also on the list of the prisoners given to the authorities by the co-rapporteurs during their November 2006 visit with a request that their release be considered on humanitarian grounds (see Doc. 11226). He was accused of participation in the murder of former Vice-Speaker of the Supreme Council in 1994 and sentenced to fifteen-year term of imprisonment. He has served 13 years. Mr Gumbatov is very ill and has undergone critical surgery from which it is difficult to recover in prison.

51. We are thus pleased to note that on February 27, the Nizami District Court ordered the conditional release of Mr Gumbatov.

52. **Mr Ali Insanov**, former Minister of Health from 1993 to 2005, was arrested among several senior government officials in the run-up to the 2005 parliamentary election and was sentenced to eleven years imprisonment, found guilty of embezzlement of government funds, abuse of office and of receiving bribes. Ten other officials received prison terms ranging from three to nine years.

53. The prison conditions of Mr Insanov are unacceptable. The prison does not have minimal living conditions: there is no heating system although the temperature can drop below zero degrees in the barracks, no running water and no light. He lives in a prison barrack intended for 128 persons.

54. We urge the authorities to do the necessary work to provide penitentiary centre No.12 with access to gas and thus install a functioning heating system and to provide electricity for the establishment.
55. **Mr Mushfiq Madatov** is the former Head of the Nasimi District Police Station and was convicted three times on different charges (abuse of power, taking bribes and illegal possession of arms). He is currently serving a seven-year sentence. He said he was convicted three times in absentia and that no witness could testify against him during his trials. He believes he was charged because he used to work with Razoul Guliyev, before the alleged coup d'Etat. Shortly before the end of his sentence, he was accused of rape that allegedly took place within the prison (of a person visiting in the prison). The case is very unclear to us. Even the authorities admitted discrepancies in the case and informed us that the alleged victim changed her testimony at the trial and denied the accusation of rape. Mr Madatov does not seem to know the reason why he remains in prison.
56. Moreover, Mr Madatov applied for conditional release after serving two thirds of his sentence (as provided in Article 76 of the Criminal Code) but this was refused.
57. He complained about ill-treatment during his imprisonment and showed us signs of torture and especially his injured ankle which had not been healed properly.
58. **Mr Einulla Fatullayev**, editor-in-chief of two independent newspapers, Realni Azerbaijan (a Russian language weekly) and Gundelik Azarbaycan (an Azeri language daily), was charged with incitement to ethnic and religious hatred and terrorist offences on 3 July 2007 and sentenced to eight and a half years imprisonment. These new charges, brought against Mr Fatullayev by the Ministry of National Security (MNB), relate to a commentary published in Realni Azerbaijan. The newspaper article focused on Azerbaijan's relations with Iran and contained criticism of the Azerbaijani government.
59. The Assembly already raised concern about Mr Fatullayev's case in Resolution 1545 (2007). This prosecution is the latest in a catalogue of charges brought against Fatullayev during the past year. In September 2006, Mr Fatullayev received a two-year suspended sentence and was ordered to pay damages in a criminal libel case brought by Interior Minister Ramil Usubov. Death threats were received by Mr Fatullayev in early March 2007.
60. Since Mr Fatullayev's imprisonment, serious concerns have been raised about the conditions of his detention. On 29 May 2007, Mr Fatullayev was transferred to the National Security Ministry Detention Centre, where he says that he has been deprived of food and water and forced to sleep on a metal bed with no mattress. Since January 2008, he is detained in penitentiary centre No.12.
61. He told us that he had applied for pardon before the December 2007 Presidential decree but he had been refused.
62. We urge once more the authorities to release Mr Fatullayev.
63. We regret not having been able to meet the other two imprisoned journalists. We nevertheless summarise below the main facts of their cases:
64. **Mr Sakit Zahidov (Mirza Sakit)** is a well-known poet and opposition satirical journalist who was arrested on 23 June 2006. He was sentenced on 4 October to a three-year prison sentence for illegal possession and use of drugs. Ten grams of heroin were found in his pocket while he was being searched in the police station.
65. When the co-rapporteurs met him in prison during their last visit in November 2006, he told them, as he has always maintained since his arrest, that the illegal substance was planted on him and that he neither uses nor deals in drugs. Police admitted in court that a urine drug test performed on the same day of his arrest was clean. No blood drug test was performed. According to doctors called to testify in court, statements they wrote in medical documents calling Mirza Sakit a drug addict were based on merely visual assessments.
66. We urge once more the authorities to release Mirza Zakit.
67. **Mr Ganimat Zahidov** (brother of Sakit Zahidov) is editor of the leading independent newspaper *Azadlyq*. He was arrested in November 2007, charged with "hooliganism" and remanded in custody for two months pending his trial. We were not allowed to meet him since, during our visit, the investigation of his

case was still on-going. On 7 March 2008, Mr Ganimat Zahidov was sentenced to four-year term of imprisonment.

## V. ELECTORAL REFORM AND PREPARATION OF THE 2008 PRESIDENTIAL ELECTIONS

68. For the last elections in 2005-2006, the electoral legislation was not amended in line with the recommendations repeatedly made by the Venice Commission.<sup>3</sup> The Azerbaijani authorities finally requested the assistance of the Venice Commission for the reform of the Electoral Code of Azerbaijan just before the May 2006 re-run elections.

69. In Resolution 1505 (2006), adopted in June 2006, the Assembly urged the authorities of Azerbaijan to amend the provisions regarding the composition of the electoral commissions at all levels so as to establish an election administration which enjoys the confidence of the electorate and of all the stakeholders and to further develop the procedure for an efficient handling of election-related complaints and appeals with the assistance of the Venice Commission."

70. Our visit coincided with a visit by the Venice Commission. The authorities stressed the good and long standing co-operation with the Venice Commission.

71. The most important issues on which the Azerbaijani authorities are co-operating with the Venice Commission with a view to revising the Electoral Code are: the composition of the Central Electoral Commission (CEC) and territorial electoral commissions; the voters' list and its accuracy, as well as the complaints and appeal procedures.

72. The CEC is composed of 18 members elected by Parliament (6 from the majority party, 6 from the minority parties and 6 representing independent members of Parliament); 16 members have now been elected and the CEC has the required quorum to function. We urged all parties to agree on the designation of the two remaining members.

73. The existing provisions in the Electoral Code are not sufficient to ensure that the commissions are not dominated by pro-government forces. The composition of the CEC, but also of the territorial electoral commissions and the precinct electoral commissions should be revised in order to be more balanced. Independent candidates in the CEC and territorial electoral commissions should be agreed upon by consensus and we encourage all parties to ensure the effective work of territorial commissions, as well as the fair distribution of the posts of Chairman, Vice-Chairman and Secretary (1/3 for the majority party, 1/3 for the opposition, 1/3 for the independents).

74. All 32 000 members of territorial and precinct electoral commissions are currently being trained by high-level speakers. A major effort in modernisation of premises of electoral commissions had been made and each of the 125 constituencies will be provided with their own modern and appropriate premises by the day of the elections.

75. The law provided for the updating of the voters' list to be dealt with between January and May 2008. The 4,6 million voters' list is thus currently being updated. The procedure has been simplified: while in the past an appeal to the Court was necessary, a simple request accompanied by a proof of residence can now induce the correction of the voters' list. In this regard, the Chairman of the CEC is confident that all relevant measures have been taken so that mistakes from the last ballot would not be repeated.

76. The process of registration of candidates is still a matter of concern. It can be refused in a number of cases. The possibility to de-register a candidate just before the election day, with no real possibility to appeal and have a decision in time for the elections, is another major problem of the current legislation.

77. The Venice Commission adopted an interim opinion on the draft Electoral Code at its 74th Plenary Session on 14-15 March 2008. The Parliament of Azerbaijan should adopt the draft law during its spring session, hence in due time for the forthcoming presidential elections.

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<sup>3</sup> A positive development has been the Presidential decree of October 2005 which introduced the marking of voters' fingers with invisible ink and the subsequent introduction of mandatory inking in the Electoral Code.

78. The opposition parties consider they have not been involved in the revision of the Electoral Code and believe the Presidential elections will be a farce. However, only one opposition leader, Mr Ali Kerimli, Chairman of the Popular Front Party, declared his party ready to boycott the elections if no substantial changes occur in the coming month, namely as regards the functioning of the Electoral Commissions and the freedom of assembly.

79. Concerning the campaign itself, the Electoral Code of Azerbaijan provides that political parties and blocs are entitled to free broadcast time and print space, under equal conditions in the state funded media. However, the Chairman of the National TV and Radio Broadcasting Council regretted that no precise regulations provided for the allocation of time to candidates on private channels. It is worth noting that the National TV and Radio Broadcasting Council is still financially dependent on the government so that its independence from the Executive is not guaranteed (see above).

80. We urged all political parties to take part in the elections, underlined the importance of the adoption and proper implementation of the law on freedom of assembly, as well as of the freedom of the media in the light of the forthcoming Presidential elections. We urged the authorities of Azerbaijan to pass on a clear message, in time for the 2008 Presidential elections and at the highest political level, that electoral fraud will not be tolerated.

81. Azerbaijan cannot afford to fall short in meeting Council of Europe commitments and standards for democratic elections again. We urged authorities to provide all opportunities for free and fair election and complete without further delay the reform of the Election Code of Azerbaijan.

## **VI. OTHER OUTSTANDING ISSUES**

### **1. Reform of the judicial system and the bar association**

82. The Azerbaijani authorities have been co-operating closely with the Council of Europe on the reform of the judiciary since 2000 with a view to ensuring greater independence of judges and improving the procedures of selection and appointment of judges. Judicial corruption and lack of independence of the judiciary remain serious problems in Azerbaijan and we welcome the open and constructive attitude of the Azerbaijani authorities which are fully aware of the need to further reform and train the Azerbaijani judiciary, effectively eradicate corruption among judges and improve the negative image of justice in the country.

83. Among the relevant reforms, the setting up of the Judicial Legal Council in 2005 was a major step forward for ensuring, in the long run, the smooth functioning of the judicial system.

84. We met with several members of the Judicial Legal Council who showed great determination in their tasks. The selection, transfer and promotion of judges, evaluation of performance and lifting of the immunities of judges are among the council's tasks. Its 15 members are appointed by the President, Parliament and the Constitutional Court and include: the Minister of Justice, the Chairman of the Supreme Court, two judges from the Courts of Appeal and the first instance courts, a judge of the Supreme Court, a judge from the Nakhichevan Autonomous Republic and representatives from the Bar Association, the Prosecutor's Office and the Ministry of Justice.

85. The Council is currently chaired by the Minister of Justice, which raises concerns in terms of separation of powers.

86. The reforms also provided for new recruitment procedures for judges, extended to judges the financial requirements set forth in the 2004 Law on Combating Corruption, including the submission of tax returns and restrictions on gifts, provided for the creation of a committee to select judges and establish a training programme for candidates for the judiciary. A channel for individuals and businesses to complain about alleged judicial corruption was created. Citizens can appeal directly to the Judicial Legal Council which has the power to initiate proceedings against judges accused of corruption.

87. Six Courts of Appeal (Baku, Ganja, Sumgait, Ali Bayramli and Sheki), a Court on Serious Crimes in the Autonomous Republic of Nakhichevan and Economic Courts in Baku, Sumgait and Sheki have been established since 2005 and 17 new court buildings have been inaugurated. The four existing Economic Courts will be increased to seven.

88. As regards the selection procedure of judges, a series of examinations have been organised since 2006 to recruit new judges in what we heard was a fair and transparent selection procedure drawn up in co-

operation with the Council of Europe. The candidates who are successful in the written examination are subsequently interviewed by the Judicial Council, which then submits the list for the President's approval. The Executive has still the final word in the new selection procedure and the co-rapporteurs received several complaints about the lack of transparency in the oral interview process.

89. The progress made in creating the legislative and institutional framework for the judicial system is promising in terms of the creation of an independent judiciary in Azerbaijan. However, the lack of effective and systematic implementation of the law remains a major obstacle to the proper functioning of the judicial system. For example, at present, judges often decide whether or not to hear a case without relying on any specific legal provisions.

90. The low salary and heavy workload of judges is still a major problem for the judiciary in the country. Azerbaijan has only 4.06 judges per 100 000 people. Despite a recent significant increase, the annual salary of a local court judge in the country is 11 635 US\$.

91. Another problem is that bailiffs lack the power, skills, resources and initiative to enforce court decisions. Failure to enforce court decisions further undermines trust in the judicial system. The lack of qualified lawyers remains another issue of concern. The reinforcement of the defence bar is critical for preventing human rights abuses and protecting the rights of the defendants in criminal proceedings.

92. The Prosecutor General informed us about a draft Code of Conduct on prosecution bodies that is under preparation. A Code of Conduct for judges also remains to be drafted to prevent abuse of power and corruption, in accordance with the 2006 Decree on the reform of the judiciary.

## **2. National Action Plan on Human Rights**

93. As a follow-up to the 2006 Presidential Decree on the National Action Plan on the Protection of Human Rights (NAP), a Task Force comprising all relevant public institutions and NGOs was set up in May 2007 to implement the NAP and is chaired by the Ombudsperson. The Task Force set up five working groups of experts working on the different fields of activities covered by the NAP.

94. In this regard one should add that the Ombudsperson pays particular attention to the situation in prisons, seeking investigation on reported cases of torture or ill-treatment and regularly visiting prisoners.

## **3. NGO's**

95. A presidential decree was adopted on 13 December 2007 setting up the National Council for NGOs, as well as providing a set of principles governing public financial support to NGOs, which includes the establishment of the Council for State Support to NGOs. The fact that all 11 members of the council are appointed by the President, even if 8 of them are proposed by the NGOs themselves, gives rise to concern as regards the independence of the institution. That said, the regulations of the Council of State Support to NGOs provide for fair, objective and transparent procedures for the allocation of funds. Once again, the reform lies less in the letter of the law than in its implementation. The future work of this new council for NGOs will prove its independence or otherwise.

## **4. Prison reform, detention conditions and allegations of ill-treatment**

96. The Minister of Justice issued an order in April 2006 setting out regulations on public participation in and supervision over, the prison system and establishing a Public Committee to secure their implementation. Access to prisons has been granted to the Ombudsperson, local and international non-governmental organisations and human rights defenders. The situation is now well monitored and further steps to improve the prison conditions have to be taken.<sup>4</sup>

97. The construction of several new prisons is underway or planned and should, on the long term, improve the situation in the prisons of Azerbaijan.

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<sup>4</sup> See also the report of the Council of Europe Human Rights Commissioner on his visit to Azerbaijan, 3-7 September 2007, CommDH(2008)2.

98. Today, prison conditions in Azerbaijan remain harsh despite continuing infrastructure improvements. The situation in the Gobustan prison still gives rise to particular concerns in view of the number of deaths and suicides committed by inmates. Specific complaints against the inhumane regime set up by the new Chief of Prison, Kazim Abdullaev have been received from several prisoners, including allegations of physical and psychological torture.

99. We have received numerous reports of cases of ill-treatment and allegations of torture carried out by law-enforcement officials during police custody or pre-trial investigations, as well as in the army, for the purpose of extracting confessions or obtaining incriminating statements by witnesses. Investigations into such behaviour have rarely led to prosecution of officers who have committed abuses.

100. We would like to draw particular attention to penitentiary centre no 13, where we visited Mr Insanov. The detention conditions are particularly harsh. There is no heating as the gas pipeline does not reach the settlement. Whereas penitentiary centre no 12, which we also visited, is heated and is located only few meters away from centre no 13. We expect that the authorities will provide penitentiary centre no 13 with access to gas and thus install a functioning heating system for the establishment.

101. Regrettably, the only report of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which has been published concerning Azerbaijan to date is that on the first periodic visit in 2002. The last CPT visit to Azerbaijan took place in November 2006. The report on that visit, which was sent to the authorities in July 2007, has not yet been made public. The authorities' response was sent to the CPT in February 2008. We were informed that the Azerbaijani authorities were currently providing for the translation of the CPT reports in order to make them public and available to the Azerbaijani population, including prisoners. We welcome this initiative and see no reason to further postpone publication of the CPT reports on Azerbaijan, in line with the standard practice of member states. We further encourage the reports on the two ad hoc visits of January 2004 and May 2005 to be made public.

## **5. Negotiations for the settlement of the Nagorno-Karabakh conflict**

102. Our visit almost coincided with that of Lord Russell-Johnston, who was in Baku just the day after we left in his capacity of Chairman of the Ad Hoc Committee on the conflict. The purpose of the visit was to prepare an inter-parliamentary conference in Strasbourg bringing together MPs from Armenia and Azerbaijan in June 2008.

103. It is worth recalling that our Committee held a hearing on Frozen Conflicts in Berlin on 5-6 November 2008 in the course of which the conflict of Nagorno-Karabakh was also discussed.

104. 4,604 Azerbaijanis are missing from the conflict over Nagorno-Karabakh. This is a human rights and a humanitarian issue, involving the right of the families to know the fate of their loved ones. The issue continues to poison relations between the two sides, notwithstanding the fact that it should be treated as a humanitarian and not a political issue. We recall that the steps which the parties are expected to take to solve this problem are highlighted in Resolution 1553 (2007) on Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions.

## **VII. CONCLUSIONS**

105. Growing oil business has given Azerbaijan a new form of independence that has strengthened the geostrategic position of the country. Azerbaijan clearly opted for European standards in terms of democracy, rule of law and human rights when it joined the Council of Europe. Nevertheless, the Azerbaijani authorities are facing a major challenge as they try to transform important dividends of the oil business into sustainable development of the economy and society.

106. The co-rapporteurs are well aware that democracy cannot be built in a couple of years and that a change of mentalities can take decades. However, we cannot tolerate the deterioration of the human rights situation in Azerbaijan.

107. The Azerbaijani society needs reconciliation measures in order to regain the path of democratisation. Neither the alleged lack of professionalism of journalists nor the fight against terrorism can be used as a pretext to eradicate political adversaries. We urge the authorities to take urgent steps to restore a climate of confidence and prepare the ground for fair Presidential campaign and elections.

108. We will follow closely the decision of the Bureau of the Assembly on 13 March 2008 concerning the Motion “on the follow-up to the issue of political prisoners in Azerbaijan” and the possible appointment of a special rapporteur on this issue.

109. Moreover, given the importance of the reforms underway in the light of the forthcoming Presidential elections, we would like to propose that the Assembly holds a debate on the functioning of democratic institutions in Azerbaijan during June 2008 part-session.

**APPENDIX****Programme of the fact-finding visit of the co-rapporteurs in Baku (4-7 February 2008)**

Co-rapporteurs: Mr Andres HERKEL (Estonia, EPP/CD) and Mrs Evguenia JIVKOVA (Bulgaria, SOC)

Secretariat: Ms Marine TREVISAN, Co-secretary, Monitoring Committee of the Parliamentary Assembly of the Council of Europe

**Monday, 04 February**

- 08.30 – 09.30 Working breakfast with Mr Denis BRIBOSIA, Special Representative of the Secretary General of the Council of Europe to Azerbaijan
- 09.30 – 11.00 Meeting with CoE member states Ambassadors
- 11.15 – 12.15 Meeting with NGOs on issues related to prisoners:  
 - Ms Saida GODJAMANLI, Bureau of Human Rights and Law Respect  
 - Mr Elcin BEHBUDOV, Azerbaijan Committee against Torture  
 - Mr Jamil HASANLI, MP and Chairman for the Protection of the Rights of Farhad Aliyev  
 - Mr Kamil SALIMOV, Prison Watch
- 12.15 – 13.15 Meeting with NGOs on issues related to democratic institutions:  
 - Ms Rena SAFARLIYEVA, Transparency International  
 - Mr Ilgar MAMMADOV, representative of OSI-Soros; Director of Baku Political School  
 - Mr Hafiz HASANOV, Law and development Public Association
- 14.00 – 15.00 Meeting with NGOs on functioning of Judiciary:  
 - Mr Intigam ALIYEV, Legal Education Society  
 - Ms Leyla YUNUS, Institute of Peace and Democracy  
 - Mr Aslan ISMAILOV, Attorney at Law  
 - Mr Annagi HACIBEYLI, Azerbaijan Lawyers Association
- 15.00 – 16.15 Meeting with political leaders:  
 - Mr Ali KERIMLI, Chairman of the Popular Front Party  
 - Ms Lala SHOVKET, Leader of National Unity movement  
 - Mr Sardar JALALOGLU, Deputy Chairman of ADP  
 - Mr Eldar NAMAZOV, Chairman of Public Forum for Azerbaijan "In the name of Azerbaijan"  
 - Mr Isa QAMBAR, Chairman of Musavat Party
- 16.30 – 17.00 Meeting with political leaders:  
 - Mr Asim MOLLAZADE, Chairman of Azerbaijan Democratic Reforms Party  
 - Mr Igbal AGAZADE, Chairman of UMID Party
- 17.00 – 18.30 Meeting with media representatives:  
 - Mr Emin HUSEYNOV, Institute for Reporter Freedom and Safety (IRFS)  
 - Mr Rauf ARIFOGLU, "Yeni Musavat" Newspaper  
 - Mr Uzeiyr JAFAROV, former correspondent of "realny Azerbaijan"  
 - Mr Mehman ALIYEV, director of Turan News agency  
 - Mr Elchin SHIKHLINSKIY, "Zerkalo" Newspaper, Chairman of Union of Journalists  
 - Mr Eynur BAYNOV, Day Az  
 - Mr Arif ALIYEV, Chairman of Yeni Nasil
- 20.00 Working dinner with Ambassador Jose-Luis HERRERO, Head of the OSCE Office in Baku and Martin AMACHER, Head of the ICRC delegation in Azerbaijan

**Tuesday, 05 February**

- 09.00 – 10.00 Meeting with Mrs Elmira SULEYMANOVA, Ombudsperson
- 10.15 – 11.15 Meeting with Mr Mazahir PANAHOV, Chairman of the Central Electoral Commission
- 11.30 – 12.30 Meeting with Mr Zakir GARALOV, Prosecutor General
- 14.30 – 15.30 Meeting with Mr Elmar MAMMADYAROV, Minister of Foreign Affairs
- 15.45 – 16.45 Meeting with Mr Nushiravan MAHARRAMLI, Chairman of the National TV and Radio Broadcasting Council
- 17.00 – 20.00 Meetings in prison with Mr Rasim ALEKPEROV, Mr Mushfiq MADATOV, Mr Sahavat GUMBATOV and Mr Ruslan BASHIRLI, detained in Penitentiary Centre no 1

**Wednesday, 06 February**

- 08.00 - 08.45 Meeting with Mr Enver GAFARLI, Chairman of the Council on political prisoners problems and Mr Mammad NAZIMOGLU, Executive Director of The Free Speech foundation
- 09.00 – 10.00 Meeting with Mr Eldar MAHMUDOVS, Minister of National Security
- 10.15 – 11.15 Meeting with representatives of the judiciary, members of the Legal Council of Justice
- 11.30 – 12.30 Meeting with Mr Fikrat MAMMADOV, Minister of Justice
- 14.30 – 15.30 Meeting with Mr Ilham ALIYEV, President of the Republic of Azerbaijan
- 15.30 – 20.00 Meetings in prison with Mr Eynulla FATULLAYEV detained in Penitentiary Centre no 12 and Mr Ali INSANOV detained in penitentiary Centre no 13

**Thursday, 07 February**

- 09.00 – 09.50 Meeting with members of Milli Mejlis Delegation to PACE
- 10.00 – 11.50 Meeting with members of Task Force on Political Prisoners
- 12.00 – 13.00 Meeting with Mr Ogtay ASADOV, Chairman of Milli Mejlis
- 14.30 – 15.30 Meeting with Mr Ramiz MEHDIYEV, Head of the Presidential Administration
- 16.00 – 19.00 Meetings in prison with Mr Natiq EFENDIYEV, Mr Akif HUSEYNOV detained in Penitentiary Centre no 9