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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

Information note by the co-rapporteurs on their fact-finding visit to Baku (1-3 February 2011)¹

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¹ This information note has been made public by decision of the Monitoring Committee dated 11 April 2011.

I. Introduction

1. We visited Azerbaijan from 1 to 3 February 2011. This was our first joint visit as co-rapporteurs in the framework of the monitoring procedure². At the same time, it was the first visit since the Parliamentary Assembly of the Council of Europe (PACE) held a debate on the functioning of democratic institutions in Azerbaijan³, in June 2010, and also the first visit after the parliamentary elections which took place in November 2010.
2. With regard to the ongoing monitoring procedure, we have noted that, since Azerbaijan's accession to the Council of Europe in 2001, all our predecessors have decided to focus on the functioning of democratic institutions.
3. As a consequence, over the last 10 years, only two full monitoring reports have been debated in the Assembly. Although we understand the reasoning behind such a choice in the past, we are, for our part, determined to respect an ordinary two-year cycle for a full report on the monitoring of obligations and commitments by Azerbaijan as contained in Opinion No 222 (2000) and other relevant resolutions adopted by the Assembly thereafter. We believe that in this way we will be able to evaluate the country's overall progress in the most balanced and objective manner.
4. On the other hand, our intention is to get well acquainted with the situation in the country before we produce our first report. We plan to carry out one more visit later this year before we submit to the Committee our conclusions on the state of fulfilment of commitments and obligations by Azerbaijan.
5. In accordance with this logic, during our visit we focused on the state of implementation of different commitments and obligations, but we also attempted to identify major concerns with a view to establishing a meaningful political dialogue with the authorities on possible measures to be undertaken in order to remedy the situation.
6. We met a number of high officials including the Ministers of Justice and National Security, the Prosecutor General, the Chairman of the Supreme Court, the Chairman of the Central Election Commission, the Chairman of National TV and Radio Broadcasting Council as well as the Ombudsperson. In the Milli Mejlis (Parliament), we met the Chairman and representatives of the ruling party (The New Azerbaijan Party), and other forces represented in the Milli Mejlis. We also held a meeting with the members of the Azerbaijani delegation to the PACE. In Sumgait, an industrial city populated by 300 000 inhabitants and situated 40 km from Baku, we met the Head of the local executive power as well as representatives of the local municipality.
7. We also held a series of meetings with leaders of extra parliamentary opposition parties: the Azerbaijan Democratic Party, the Umid Party (its leader, Mr Iqbal Agazade is the only member of his party to have been re-elected in the last elections) and the Citizen Development Party. We also invited the leaders of two other major extra parliamentary opposition parties, namely Musavat and the Azerbaijan Popular Front Party but, to our regret, they refused to meet us and issued a statement in which they said that, following the position taken by the PACE on the recent parliamentary elections, they had lost confidence in its efforts towards the development of democracy in Azerbaijan. It is worth recalling that they had also refused to meet the members of the pre-electoral mission of the PACE's *ad hoc* Committee on the observation of elections.
8. Furthermore, we met a number of representatives of non-governmental organisations (NGOs) active in the areas of democracy and political pluralism as well as of media environment. Also in Sumgait, the local authorities organised a meeting with NGOs.
9. We are grateful to the representatives of the diplomatic community in Baku for their readiness to share with us their opinions on the situation in Azerbaijan. We spoke to the Ambassadors of France, Austria, Norway, Netherlands, Germany and Belgium as well as to the Chargé d'Affaires of the European Union Delegation and representatives of the embassies of the United Kingdom, Poland, as well as of the OSCE.
10. Finally, we visited Mr Eynulla Fatullayev, the editor-in-chief of Gundelik Azerbaijan and Realniy Azerbaijan newspapers, in the pre-detention centre where he is awaiting transfer to a prison after being sentenced to a further two and a half years' imprisonment for possession of drugs.

² Mr Agramunt was appointed on 24 June 2010 to replace Mr Herkel ; Mr Debono Grech has been co-rapporteur since 18 November 2009, and paid his first visit in this capacity on 8-11 February 2010.

³ See Doc. 2270

11. We would like to express our gratitude to the parliamentary delegation of Azerbaijan and its secretariat for the excellent organisation of the visit, as well as to the Council of Europe office in Baku for their help in arranging the meetings with representatives of the civil society, media, opposition parties and diplomatic community.

II. Democracy

12. Our visit took place two months after the parliamentary elections held on 7 November 2011. During its 2011 first part session, the PACE took position on these elections. This is contained in the report on the observation of the parliamentary elections in Azerbaijan by the *ad hoc* committee of the Bureau⁴. We invite all those interested to refer to this report, as we are not going to repeat its findings in the present note and will limit ourselves to quoting its conclusion: "(...) the *ad hoc* committee, whilst stating that the whole election process showed progress in reaching Assembly and OSCE standards and commitments, is, however, convinced that significant progress would still be necessary to reach an overall electoral and democratic consensus in Azerbaijan".

13. We were both members of the *ad hoc* committee of the Bureau and we participated in the pre-electoral and electoral missions. Although we fully subscribe to the conclusions of the report, we wish to stress that, on election day proper, neither of us – and we visited different polling stations – witnessed any major shortcomings or deficiencies.

14. During the meetings with the civil society and the extra parliamentary opposition, however, we heard strong criticism of the electoral process. Main concerns related to a deficient candidate registration process, a restrictive political environment, administrative obstacles to mounting an effective campaign, unbalanced and biased media coverage, misuse of administrative resources, as well as the composition of election commissions, alleged irregularities on voting day and an unsatisfactory appeal system. We were informed by the representative of the Law and Development Association that approximately 100 documented complaints will be lodged in the European Court of Human Rights after having exhausted the available legal domestic remedies.

15. Indeed, some of these allegations have been confirmed by the report of the OSCE/ODIHR which was published just before our visit. According to its conclusions, "(...) certain conditions necessary for a meaningful and competitive election were lacking."

16. The Electoral law, as amended in 2010, unfortunately did not address outstanding recommendations from the Venice Commission and the OSCE/ ODIHR, in particular those relating to the composition of the election commissions. Furthermore, the Election Code still contains inconsistencies and ambiguities, not least relating to candidate eligibility, as well as to the complaints and appeals process.

17. Furthermore, limitations put on fundamental freedoms of peaceful assembly and expression during the electoral campaign, and more generally, the restrictive environment for opposition political forces are of particular concern.

18. As a result, the main opposition parties did not win any seats in the Parliament (except for 1 for the Umid Party) and remain outside it. The ruling party obtained 71 out of 125 seats, the other mandates being won by independent candidates and by parties perceived as allies of the governing majority. This does not preclude their often critical approach to governmental policies.

19. We discussed all these concerns with Mr Panahov, the Chairman of the Central Election Commission (CEC), who provided us with exhaustive information on the electoral process. According to him, all irregularities signaled to the CEC by the opposition in the run up period and during the elections have been carefully examined and the shortcomings were eliminated. For example, out of 172 candidates who had been denied registration and who appealed, 43 were reinstated. He also stressed the very high number of international (1029) and domestic (48 000) observers who were registered and enjoyed very good co-operation with the CEC.

20. All our interlocutors on the governmental side stressed the organisational weakness and fragmentation of the opposition parties and their inability to gain the voters' support for their programmes. They also complained about a lack of constructive approach on the side of the opposition, which prefers to criticize the authorities rather than to enter into political dialogue.

⁴ See Doc. 12475

21. It is beyond any doubt that, in order to fully comply with its commitments and obligations, Azerbaijan must create a political environment allowing for the establishment of a truly meaningful political dialogue, in particular by providing the necessary space for the political forces opposing the Government in the framework of the democratic process. We both are deeply convinced that it is in the best interest of the ruling party to confront its opponents in a representative body and involve them in a meaningful political dialogue. This is the message which we have systematically tried to pass on in our discussions with the authorities.

22. The main opposition parties are divided into two blocks which are currently negotiating their possible unification. In our discussions with those who accepted our invitation, we shared our concept of the role of the opposition which should have its place in the system, enjoy certain rights but also assume responsibilities. The opposition leaders complained about the restrictive climate for their activities, including outside the electoral campaign with limitations of the freedom of expression, of the freedom of assembly, intimidation and in some cases even persecution of members and supporters, lack of financial resources.

III. Human rights and freedoms

23. We have already outlined some outstanding concerns with regard to human rights and freedoms in the previous chapter, but here we would like to examine them more closely, as in our opinion they remain the major obstacle to the fulfillment of the obligations and commitments by Azerbaijan.

24. As mentioned above, according to independent civil society organizations and the opposition, the state of freedom of expression has not improved. This has, unfortunately, been confirmed by the report of the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, published in 2010.

25. Despite the Assembly's recommendations in this respect, the Law on Defamation has not been adopted, and journalists continue to be prosecuted under charges of libel and insult (respectively articles 147 and 148 of the Criminal Code). In our discussions with the authorities, we underlined that decriminalisation of defamation is urgently needed in order to bring the legislation in conformity with European standards.

26. One of the commitments undertaken by Azerbaijan upon accession referred to the turning of one of the national television channels into a public channel managed by an independent administrative board. During our visit, we met Mr Nushiravan Maharrammli, Chairman of the National TV and Radio Broadcasting Board. We received exhaustive information about the composition and the role played by the Board, which is composed of 9 members appointed by the President, grants licenses and monitors the broadcaster's compliance with the law. It also ensures the political neutrality of a public channel.

27. During the meeting with independent journalists, however, we heard some criticism of the Board and the way the TV broadcasting is administered. They complained about the fact that a state channel had not been converted into a public channel as foreseen in the commitment, but was created independently of it. Both channels are financed by the Government which has full control over them, and uses them as a political tool.

28. Due to the laws in force, there is no free advertisement market which could finance the media outlets. This situation does not leave any possibility for any independent mass media outlets to exist. According to the media representatives whom we met, the distribution of the press is also controlled by the authorities.

29. We were told by the media representatives that journalists are subjected to harassment and even to physical assault⁵. The investigations usually do not yield any results and the guilty are never found and punished. In this context, it is worth recalling that, despite the efforts taken by the authorities, the perpetrators of the murder of Mr Elmar Huseynov, editor-in-chief of the Monitor Magazine, killed in 2005, have still not been brought to justice.

30. In this context the question of political prisoners was raised. We do not wish to interfere here with the mandate of Mr Strässer, Rapporteur on the political prisoners in Azerbaijan of the Committee on Legal Affairs and Human Rights, although in due course we will refer to his conclusions in the preparation of our report.

31. At this stage, however, we would like to express our deleted concern about the situation of the journalist Eynulla Fatullayev, imprisoned since 2007. In a judgment dated 22 April 2010, which became final on 4 October, the European Court found a violation of Article 10 (freedom of expression) in relation to two

⁵ One NGO told us that there had been a total of 46 physical attacks on journalists in the last year alone, but we were unable to ascertain whether these attacks were committed by law enforcement agencies or by unknown perpetrators

defamation proceedings brought against Mr Fatullayev, and a violation of the right to an impartial tribunal and the right to the presumption of innocence, due to statements made by the Prosecutor general while the case was pending before the courts. The Court ordered the immediate release of Mr Fatullayev and awarded him 25 000 € for non pecuniary damage. In accordance with domestic law, the Azerbaijani Supreme Court annulled the two convictions for defamation on 11 November 2010. The authorities also informed us that, in late December 2010, the amount awarded by the European Court had been transferred to Mr Fatullayev's bank account.

32. However, on 6 July 2010, Mr Fatullayev was tried on the first instance on another set of charges (possession of drugs found in his clothes in prison) and was convicted and sentenced to a further two and a half years' imprisonment. Mr Fatullayev told us he was not a drug addict and referred to a medical certificate that would prove it. He claimed that the drug possession charge was entirely fabricated. We urge the authorities to consider the possibility of releasing Mr Fatullayev using all available legal means.

33. At the same time, we would like to express our satisfaction that, on 15 November 2010, two well-known youth activists and bloggers, Emin Milli and Adnan Hajizade, were conditionally released after having served 16 months of their respective 30 months and 24 months prison sentences. We were informed that they had submitted their cases to the European Court of Human Rights.

34. Regrettably, the election campaign showed even more clearly that the question of freedom of expression and media remains a major concern in Azerbaijan.

35. Another concern relates to the freedom of assembly. In May 2008, the Law on Freedom of Assembly was amended in order to remove a number of restrictions and ease the full enjoyment of this right in practice. The authorities have widely used the Venice Commission expertise for the elaboration of the amendments. However, some concerns resulting from the implementation of this law remain. This was particularly obvious during the electoral campaign when both opposition and pro-governmental rallies in Baku and elsewhere were authorised only in distant places, far away from the centre and difficult to access. Moreover, some public gatherings and demonstrations were cancelled at the last minute, following a decision by the local administration to change the venue.

36. In 2009, some amendments requiring re-registration of religious organizations were introduced into the Law on freedom of religion. A number of refusals of re-registration have been signaled. We have been approached by representatives of Jehovah's Witnesses who applied for re-registration in November 2009, but 3 months later, they learned that their application had been refused on a technical ground (an alleged failure to include the necessary documents). Until now, the situation has not been resolved. The Jehovah's Witnesses community counts over 2000 members in Azerbaijan.

37. On 18 December 2010, police arrested approximately 50 people gathered for the weekly public meeting of Jehovah's Witnesses in a private home in Ganja. The majority was released after several hours, but 6 of them were detained in custody, and fined by a court for "violation of the rules of activity of religious structures".

38. Similar restrictions are imposed on Muslim religious organisations.

39. Upon accession, Azerbaijan committed itself to adopt, within two years of accession, a law on alternative service in compliance with European standards. This law has not been adopted until now and we have been informed by the civil society about at least one conscientious objector currently serving a prison sentence following his refusal to serve in the army. We raised this question with the relevant authorities including Mr Ogtay Asadov, Chairman of the Mijli Mejlis, and we were told that, as long as the question of Nagorno-Karabakh is not settled, the country is considered to be in a state of war and alternative service cannot be contemplated.

40. The question of the conflict over Nagorno-Karabakh was raised on several occasions throughout our visit, including in the context of the massive violation of human rights of the local population displaced in Azerbaijan who have lost their property and have no right to return. Their number is estimated at over 900 000.

41. On 2 November 2010, following talks in Moscow, Armenia and Azerbaijan signed a joint agreement aimed at resolving their dispute over Nagorno-Karabakh on the basis of international law. Unfortunately, hopes raised by this development seem to have evaporated since then, and the talks once again have reached a stalemate. Many of our interlocutors expressed their disappointment over the international community's indifference to this problem and even accused it of applying double standards. On our side, we

assured them that Resolution 1416 (2005) is a valid reference with regard to the Assembly's position on the conflict over Nagorno-Karabakh. We reiterate that only dialogue and political will on both sides will allow for the possibility of finding a solution to this conflict. In this connection, we are seriously worried about the massive increase in military spending and the continuous bellicose rhetoric.

42. Last but not least, we would refer to our very interesting exchange of views with Ms Elmira Suleymanova, Ombudsperson, who gave us an account of her activities undertaken with a view to improving the human rights situation in Azerbaijan. Despite limited resources, her commitment and efforts clearly contribute to awareness raising and human rights protection in the country.

IV. Rule of law

43. During our meetings with Mr Fikrat Mammadov, Minister of Justice, Mr Zakir Garalov, Prosecutor General, and Mr Ramiz Rzayev, Chairman of Supreme Court, we were informed of the state of implementation of different commitments in the field of judicial reform.

44. The Azerbaijani authorities have been co-operating closely with the Council of Europe on the reform of the judiciary since 2001, with a view to ensuring greater independence of judges, improving selection and appointment procedures, eliminating judicial corruption and susceptibility to the influence of the executive. The relevant laws, including the law on the Bar, explicitly mentioned in Opinion 222 (2000), have been adopted. The establishment, in 2005, of the Judicial Legal Council tasked with the selection, transfer and promotion of judges as well as evaluation of performance and lifting of the immunities for judges constitutes an important step on the way to an independent judicial system.

45. The law on combating corruption, which was on the list of Azerbaijan's commitments, was adopted in 2004 and provided for a number of measures aimed at eliminating corruption also in the judiciary. A channel for individuals and legal persons 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.

46. Azerbaijan has benefitted from a number of Council of Europe and European Union joint programmes which included trainings for the judiciary, in particular for judges.

47. The legislative and institutional framework of the judicial system seems to comply overall with Council of Europe standards and we are satisfied with the progress achieved in this respect. However, the full implementation of laws still remains problematic. We have been informed by the representatives of civil society about alleged violations of the law in some high-profile trials. There is still a perception that justice is politicised and that judges are being influenced by the executive – and unfortunately a number of well documented cases seem to confirm this perception.

48. There are also reports on alleged misconduct by law enforcement officials, and independent and effective investigations of all allegations of torture and ill-treatment, with the imposition of appropriate sanctions, should be conducted.

V. Conclusions

49. The visit has provided us with an opportunity to gather information about the state of fulfilment of obligations and commitments entered into by Azerbaijan upon its accession in 2001 and, at the same time, to get acquainted with different opinions on the progress achieved in this respect.

50. We particularly value the openness of the Azerbaijani authorities for political dialogue with the Parliamentary Assembly, as well as their clearly demonstrated political will and readiness to continue fulfilling their commitments.

51. We are also satisfied with frank and open discussions with representatives of the independent civil society and opposition. We regret that some of the opposition leaders do not attach adequate importance to political dialogue and we hope that their position will evolve in the future.

52. We both agree that important progress in the democratization of the country has to be noted. We take note of impressive legislative work accomplished by the Azerbaijani authorities with a view to bringing laws in conformity with Council of Europe standards.

53. At the same time, we believe that there are still outstanding concerns, which have to be addressed without further delay, in particular regarding the implementation of different laws. We stand ready to discuss possible measures to be taken with the Azerbaijani authorities during our next visit.

54. We are confident that the report which we are going to submit to the Committee (and then to the Assembly) before the end of this year will contribute to advancing the democratization process in Azerbaijan.

APPENDIX

Programme of the fact-finding visit to Baku (1 – 3 February 2011)

Mr Pedro AGRAMUNT FONT DE MORA, Senator
Mr Joseph DEBONO GRECH, Member of Parliament
Ms Agnieszka NACHILO, Deputy to the Head of Department of the Monitoring Committee

Tuesday, 1 February 2011

- 10:00-13:00 Meetings organized by the Council of Europe Office in Baku
- 10:00-11:30 NGOs focusing on democracy and political pluralism:
Law and Development Public Union (Mr Hafiz HASANOV)
Election Monitoring and Democracy Studies Centre (Mr Bashir SULEYMANLI)
Democracy Learning Public Association (Mr Mireli HUSEYNOV)
Democracy and HR Resource Centre Public Union (Mr Asabali MUSTAFAYEV)
Legal Education Society (Mr Intigam ALIYEV)
- 11:30-13:00 NGOs/media focusing on media environment:
Turan news agency (Mr Mehman ALIYEV)
Zerkalo newspaper (Mr Elchin SHIKHLI)
Media Rights Institute (Mr Rashid HAJILI)
IREX (Mr Alesger MAMMADLI)
Institute for Reporters Freedom and Safety (Mr Rasul JAFAROV)
- 14:15-15:00 Meeting with Mr Nushiravan MAHARRAMLI, Chairman of National TV and Radio Broadcasting Council
- 15:15-16:00 Meeting with Mrs Elmira SULEYMANOVA, Ombudsperson
- 16:15-17:00 Meeting with Mr Ramiz RZAYEV, Chairman of Supreme Court
- 17:15-18:00 Meeting with Mr Mazahir PANAHOV, Chairman of Central Election Commission

Wednesday, 2 February 2011

- 09:45-12:00 Meetings with opposition political parties:
- 09:45-10:30 Azerbaijan Democratic Party (Mr Sardar JALALOGLU)
10:30-11:15 Umid Party (Mr Iqbal Agazade) (re-elected as MP)
11:15-12:00 Citizen and Development Party (Mr Ali ALIYEV)
- 14:15 Departure to Sumgait
- 15:00-16:00 Meeting with Mr Vagif ALIYEV, Head of the local executive power
- 16:00-18:30 Meetings with representatives of the local municipality and NGOs

Thursday, 3 February 2011

- 09:00-10:30 Roundtable with the diplomatic community organized by the Council of Europe Office in Baku:
- H.E. Mr Gabriel KELLER, Ambassador, Embassy of France
H.E. Ms Sylvia MEIER-KAJBIC, Ambassador, Embassy of Austria
H.E. Mr Erling SKJONBERG, Ambassador, Embassy of Norway
H.E. Mr Arjen UIJTERLINDE, Ambassador, Embassy of Netherlands
H.E. Mr Herbert QUELLE, Embassy of Germany
Mr Jérôme PONS, Chargé d'affaires, European Union Delegation
Mr Peter BOOMS, Chargé d'affaires, Embassy of Belgium
Ms Pauline CLARKE, Second Secretary, Embassy of UK
Ms Gunel AHMEDOVA, Political & Communications Officer, Embassy of UK

Mr Jan BRODOWSKI, Second Secretary, Embassy of Poland
Ms Jacqueline CARPENTER, Head of Democratization Unit, OSCE

- 10:45-11:30 Meeting with representatives of New Azerbaijan Party, Motherland Party, Civil Solidarity Party, and independent MPs in the Milli Mejlis
- 11:30-12:10 Meeting with the Azerbaijani delegation to the PACE (in Milli Mejlis)
- 12:15-13:00 Meeting with Mr Ogtay ASADOV, Chairman of Milli Mejlis
- 13:00-14:00 Lunch (in Milli Mejlis)
- 14:15-15:00 Meeting with Mr Eldar MAHMUDOVS, Minister of National Security
- 15:15-16:00 Meeting with Mr Fikrat MAMMADOVS, Minister of Justice
- 16:15-17:00 Meeting with Mr Zakir GARALOV, Prosecutor General
Meeting with Mr Eynulla FATULLAYEV, journalist
- 19:30 Press conference organized by the Council of Europe Office in Baku