



Provisional version

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Honouring of obligations and commitments by Azerbaijan

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

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Draft resolution¹

1. Azerbaijan joined the Council of Europe on 21 January 2001. Upon accession, it committed itself to respect the obligations incumbent upon every member State under Article 3 of the Statute with regard to pluralist democracy, the rule of law and human rights. It also undertook a number of specific commitments listed in Parliamentary Assembly Opinion 222 (2000) on Azerbaijan's application for membership of the Council of Europe.

2. In accordance with the monitoring procedure, as set out in Resolution 1115 (1997) and amended by Resolutions 1431 (2005) and 1515 (2006), the Assembly assessed the progress made by Azerbaijan in the fulfilment of its obligations and commitments in Resolutions 1305 (2002) and 1545 (2007) on the honouring of obligations and commitments and in Resolutions 1358 (2004), 1398 (2004), 1456 (2005), 1614 (2008) and 1750 (2010) on the functioning of democratic institutions in Azerbaijan.

3. The Assembly acknowledges the geopolitical context of Azerbaijan, situated as it is at the crossroads of Europe and Asia, positioned between the Russian Federation, Iran and Armenia, and inhabited by a population the overwhelming majority of which is Muslim. Furthermore, the Assembly is fully aware of the ongoing conflict with Armenia over Nagorno Karabakh, which to a large extent dominates the Azerbaijani foreign policy agenda. The Assembly regrets that the negotiations have not led, so far, to any tangible results and that the resolutions by the Parliamentary Assembly, the European Parliament, OSCE and the United Nations Security Council have not been implemented up to now.

4. The Assembly recalls with satisfaction that the authorities have always declared their pro-European aspirations and pursued a policy of integration with Euro-Atlantic structures. Relations with the European Union are governed by the EU-Azerbaijan Partnership and Cooperation Agreement. Furthermore, Azerbaijan has been part of the European Neighbourhood Policy since its launch in 2004, the Eastern Partnership since 2009, and is a founding member of Euronest.

5. Since its accession, Azerbaijan has made substantial progress with regard to the signature and ratification of Council of Europe legal instruments. Azerbaijan has signed and ratified all but one of the legal instruments included in its list of commitments. The Assembly calls on Azerbaijan to ratify the remaining convention, the European Charter for Regional and Minority Languages, which it signed in 2001.

6. Clear progress has also been made in the establishment of the legislative framework in some areas crucial for the functioning of democratic institutions in compliance with European standards. In particular, the establishment in 2005 of the Judicial Legal Council constituted an important step in the country's judicial reform. Recently adopted legal acts providing for a revised recruitment procedure for judges, amendments to the Law on Combating Corruption and to the Criminal Code with regard to the criminalisation of corruption

¹ Draft resolution adopted by the committee on 12 December 2012.

mark further progress in this respect. The Assembly commends the Azerbaijani authorities for their fruitful cooperation with the European Commission for Democracy Through Law (Venice Commission). The recent request by the authorities for assistance in drafting a new law on defamation is a good example of such cooperation.

7. Regrettably, progress in terms of implementation of some laws has not been satisfactory. Restrictive application or violations of some of them are resulting in growing concern with regard to the rule of law and respect for human rights.

8. Since Azerbaijan's accession to the Council of Europe, not a single parliamentary or presidential election has fully met democratic standards, as has also been confirmed by the ECtHR's judgments in seven cases out of the 35 considered admissible relating to the 2005 parliamentary elections. Numerous cases relating to the 2010 elections are pending before the ECtHR. A number of shortcomings and deficiencies in the electoral process, in particular with regard to the electoral code, the composition of the electoral commissions, candidate registration, observers and the complaints and appeals procedure, must be addressed in time for the next elections.

9. The Assembly expresses its deep conviction that it is in the best interests of the democratic process and the ruling party itself to confront the opposition in a representative body and establish a truly meaningful political dialogue within parliament. However, since the last parliamentary elections in 2010, some well-known Azerbaijani opposition parties are not represented in parliament and the ruling party is the only one which is eligible to establish a political group. Independent parliamentarians, albeit often critical towards the government, have little chance of making their voices heard.

10. Regrettably, there is no political dialogue with the opposition parties outside parliament. The Assembly is concerned by the restrictive climate for the activities of the extra-parliamentary opposition, which complains about limitations imposed on freedom of expression and freedom of assembly and lack of access to the public media.

11. The establishment of an inclusive political system and a truly competitive and unrestrictive political environment requires full implementation of basic freedoms, including freedom of expression, freedom of assembly and freedom of association. The situation in Azerbaijan is preoccupying and the Assembly expresses its deep concern in this regard.

12. Recently adopted amendments to the Criminal Code and the Administrative Code, which have increased penalties for the organisers of, and participants in, "unauthorised" gatherings, raise concern. Considering the authorities' ongoing blanket ban on protests in Baku city centre, these amendments are likely to have a further negative impact on freedom of assembly and freedom of expression. The restrictive use of certain articles of the Criminal Code, in particular Articles 221 and 233, against participants in peaceful, albeit unauthorised, demonstrations, is another matter of concern.

13. The Assembly recalls that the independence of the judiciary is one of the basic preconditions for the rule of law, as well as the democratic principle of the separation of powers and systems of checks and balances. The lack of independence of the judiciary is a concern in Azerbaijan, where the executive branch, in some particular cases, continues to exert influence on it. The fairness of trials, including at the pre-trial stage, and equality of arms constitute other major concerns.

14. The Assembly is alarmed by reports by human rights defenders and domestic and international NGOs about the alleged use of so-called fabricated charges against activists and journalists. The combination of the restrictive implementation of freedoms with unfair trials and the undue influence of the executive, results in the systemic detention of people who may be considered prisoners of conscience.

15. Alleged cases of torture and other forms of ill-treatment at police stations, during the investigation period and in penal institutions, as well as the impunity of perpetrators, are other matters of major concern.

16. The Assembly is concerned by the criticism voiced by the domestic and international communities with regard to irregularities in the expropriation campaign started in 2009 in Baku. It urges the authorities to ensure transparency of the process, compliance with the Constitution and the domestic law, and full respect for human rights. It also calls for the revision of the cases which give rise to justified doubts and legitimate concerns about their conformity with the law, as well as the investigation of reports of alleged abuses and violations during the expropriation and reconstruction procedures, followed by adequate compensation and the bringing to justice of those who have violated the laws.

17. Despite the progress achieved in the introduction of a legislative framework aimed at fighting corruption and organised crime, the main challenge lies in the effective application of that legislation. Results from the anti-corruption campaign, launched in 2011, still remain to be seen.

18. Taking all these concerns into account, the Assembly calls on the Azerbaijani authorities to:

With regard to the functioning of pluralist democracy:

18.1. address the shortcomings and deficiencies identified by international observers during the last presidential and parliamentary elections; introduce changes to the Electoral Code in line with the recommendations of the Venice Commission in time for the next presidential election;

18.2. create an unrestrictive and inclusive political environment; establish a meaningful dialogue with the extra-parliamentary opposition;

18.3. address the question of the funding of political parties in compliance with Recommendation 4(2003) of the Committee of Ministers on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns;

18.4. reinforce the actual application of the constitutionally guaranteed principle of the separation of powers and strengthen parliamentary control over executive, and in particular:

18.4.1. review the Parliament's internal rules with a view to strengthening the possibilities for parliamentary action by individual MPs who are not members of a parliamentary group of the ruling party;

18.4.2. review the Parliament's internal rules with a view to lowering the number of MPs required for the establishment of a parliamentary faction to between 3 and 5% as is the case in other European states;

With regard to the judiciary:

18.5. ensure full independence of the judiciary, in particular vis-à-vis the executive and refrain from any pressure on it;

18.6. enact in law the role of the Judicial Legal Council as guarantor of the independence of the judiciary and implement the law effectively;

18.7. establish a fixed retirement age valid for all judges;

18.8. conduct an analysis of the deficiencies in judicial practice and give full consideration to reports of alleged shortcomings resulting in unfair trials with a view to addressing them;

18.9. develop a human resources strategy which encourages professionalism, independence and integrity, and establish a uniform and consistent mechanism for assessing the performance of judges which is linked with career development;

18.10. establish a single, effective system of random, nationwide allocation of cases;

18.11. refrain from any pressure on lawyers defending activists and journalists critical towards the authorities and ensure effective investigation into all reported cases of pressure with a view to bringing the perpetrators to justice;

18.12. ensure effective investigations with regard to all cases of alleged corruption in the judiciary;

18.13. encourage the involvement of civil society in defining and monitoring further strategies for the reform of the judiciary;

With regard to corruption and organised crime:

18.14. step up efforts to implement effectively existing anti-corruption legislation;

18.15. fulfil the recommendations of GRECO;

18.16. pursue work on the drawing up of the draft law on the prevention of conflicts of interest;

18.17. encourage the involvement of civil society in defining and monitoring strategies for the fight against corruption and organised crime;

With regard to alleged political prisoners and prisoners of conscience:

18.18. review the cases of human rights defenders, activists and journalists detained on criminal charges following trials whose conformity with human rights standards has been called into question by civil society and the international community;

18.19. use all available legal tools to release those prisoners whose detention gives rise to justified doubts and legitimate concerns;

18.20. release on humanitarian grounds alleged political prisoners whose state of health raises concern;

18.21. fully implement the resolutions of the Assembly related to alleged political prisoners in Azerbaijan;

With regard to torture and ill-treatment by law enforcement agents:

18.22. pursue efforts to eradicate abuses by law enforcement officials by effectively implementing the measures to eliminate impunity and the lack of accountability for such abuses; in particular by ensuring proper investigations into individual cases;

18.23. ensure effective investigation into all reported cases of alleged torture or ill-treatment with a view to bringing the perpetrators to justice;

18.24. introduce more effective measures and procedural safeguards against ill-treatment and torture in police stations in compliance with European standards, such as installation of cameras;

18.25. promote civil society monitoring and develop further training and awareness-raising measures;

18.26. pursue efforts in the implementation of the National Mechanism for the Prevention of Torture and Ill-Treatment, and involve the civil society in the process;

With regard to freedom of expression:

18.27. pursue efforts to elaborate a new law on defamation in cooperation with the Venice Commission;

18.28. create the proper conditions for journalists to carry out their work and refrain from any kind of pressure;

18.29. end practices of prosecution of journalists or others who express critical opinions;

18.30. effectively investigate the murders of Mr Elmar Huseynov and Mr Rafiq Tagi and bring the perpetrators to justice;

18.31. effectively investigate all cases of beatings reported by journalists and bring the perpetrators to justice;

With regard to freedom of assembly:

18.32. ensure respect for freedom of assembly, and in particular:

18.32.1. find a compromise solution to allow protest actions in some areas of Baku city centre, complying with security requirements and acceptable for both the organisers and the authorities;

18.32.2. refrain from using disproportionate police force against peaceful protesters;

18.32.3. refrain from the restrictive use of certain articles of the Criminal Code, in particular Articles 221 and 233, against participants in peaceful, albeit unauthorized, demonstrations;

With regard to freedom of association:

18.33. review the law on NGOs with a view to addressing the concerns formulated by the Venice Commission;

18.34. improve and facilitate the registration procedures for international NGOs;

18.35. create an environment conducive for NGOs to carry out their activities, including those expressing critical opinions;

With regard to freedom of conscience and religion:

18.36. review the law on freedom of religion with a view to addressing the concerns expressed by the Venice Commission;

18.37. improve and facilitate the registration procedures for minority religious groups.

19. The Assembly encourages the authorities to step up their efforts to implement the legislation in the areas crucial for the proper functioning of democratic institutions. Against this background, the Assembly decides to continue the monitoring of Azerbaijan's obligations and commitments.