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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 and Sheki (19 – 21 May 2014)

Co-rapporteurs: Mr Joseph Debono Grech, Malta, Socialist Group and Mr Pedro Agramunt, Spain, Group of the European People's Party

I. Introduction

1. We visited Azerbaijan from 19 to 21 May 2014. This was our second joint visit this year as co-rapporteurs in the framework of the monitoring procedure.
2. With regard to the ongoing monitoring procedure, the last debate on the honouring of obligations and commitments by Azerbaijan took place in the Parliamentary Assembly in January 2013, and led to the adoption of Resolution 1917(2013).
3. The purpose of this visit was to assess the implementation of the Assembly's recommendations made in January 2013, at a particularly important moment for Azerbaijan who was to take over on 15 May 2014 the six months' rotating chairmanship of the Council of Europe's executive body, the Committee of Ministers.
4. We decided to focus our visit on the fundamental question of the independence of the judiciary, which is one of the basic preconditions for the rule of law, as well as for the separation of powers and a functioning system of checks and balances.
5. The Assembly had been alarmed by consistent reports from human rights defenders and domestic and international NGOs about the alleged use of fabricated charges against activists and journalists, who, in the eyes of many, qualify as political prisoners and prisoners of conscience. We therefore decided to look specifically into the state of implementation of paras. 18.2 and 18.4 of Resolution 1917 (2013).

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* Document declassified by the Monitoring Committee at its meeting on 3 September 2014.

6. We met a number of high officials including the Minister of Justice, the Minister for Internal Affairs, the Prosecutor General, the Head of the Presidential Administration, the Chairman of the Supreme Court, and the Chairman of the Bar Association. At the Milli Mejlis (Parliament), we met the Vice-Chairman and leaders of the 9 political parties represented in Parliament and the chairman of the Parliamentary Committee on Law Policy and State Building. We also had a frank and constructive exchange of views with the Azerbaijani Delegation to the PACE.

7. Prior to meeting with the authorities, the Council of Europe office in Baku kindly organised a whole morning dedicated to meetings with NGOs, extra-parliamentary opposition members, and media representatives. We regret that only representatives from the REAL movement and the Liberal Party (which has only one MP, our former colleague Asim Mollazade) attended: both Musavat and the Popular Front refused to meet with us.

8. 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 meetings with representatives of civil society, media and opposition parties.

9. We are particularly grateful to the presidential administration who organised helicopter transport for us so we could visit Ilgar Mammadov, co-chairman of the REAL movement and head of the Council of Europe School of Political studies, who is currently in Sheki prison (close to the border with Russia) serving, since 17 March 2014, a 7 year sentence for organising mass disorders in Ismajili in January of last year¹.

II. Alleged political prisoners and pressure and intimidation of NGOs and media

10. It is extremely difficult for us as outsiders to determine beyond reasonable doubt who is the victim of politically motivated prosecution aimed at stifling any kind of dissent and who is not. We cannot rely solely on the word of domestic NGOs, activists, journalists or opposition politicians: we don't speak the language, cannot monitor each and every trial, and have to try and make a balanced assessment.

11. But we cannot rely either on the authorities' claim that there are no "political prisoners" in Azerbaijan, only people prosecuted and sentenced for violations of legal norms provided for in the Criminal Code.

12. In general, we need to note that dissent is perceived as un-patriotic and at aiming to destroy the international reputation of Azerbaijan. There is clearly a lack of communication and dialogue between the authorities and civil society. Moreover, one frequently hears talk of the existence of a fifth column threatening Azerbaijan from within, and masterminded, depending who one talks to, by either Russia, Armenia or Iran. The country is not at war and not at peace with Armenia, and increased deadly skirmishes since end of July (20 soldiers have died) between the two countries show that the conflict is not at all frozen but could escalate any moment.

13. It became clear during our visit that the authorities were rather rattled by the events unfolding in Ukraine and that there is profound concern over a possible spill-over to the conflict over Nagorno-Karabakh. Claims that Leyla Yunus, from the Institute of Peace and Democracy, who has been working on people to people contacts with Armenians NGOs for decades, is an Armenian spy, deeply concerned us².

14. As Rapporteurs, we thus find ourselves between a rock and a hard place: we will be criticized by the NGOs and extra-parliamentary opposition if we don't blast the authorities for their repressive behaviour and by the authorities if we lend too much credence to the allegations made by the domestic -and international- NGOs. The truth, as always, must be somewhere in the middle.

15. According to the representatives of the few opposition parties we met, there are currently 140 "political prisoners", according to Leyla Yunus' list there are 132, according to 4 other NGOs³, there are 28. We have also heard that some other NGOs are currently compiling lists of 81 "political prisoners". All this is confusing,

¹ Mr Mammadov had no complaints regarding his conditions of detention: the prison in Sheki is new and much better than the one in Ganja. His only grievance related to the fact that his wife and child cannot visit him often, since they live in Baku, 5 hours' drive away.

² This has to be seen in the context of a draft legislation last year, later abandoned, which aimed at criminalizing each and every contact with Armenians.

³ Helsinki Citizen Assembly for Azerbaijan, Bureau of Human Rights and Law Respect, Women Rights protection after name D. Aliyeva and the Azerbaijan National Group of ISHR.

especially since these lists evolve constantly, with people being released thanks, inter alia, to presidential pardons, and new people being arrested and charged.

16. We have given the list of the 28 new alleged political prisoners both to the Prosecutor General and the Ministry of Justice, and we await information on these cases.

17. All NGOs complained about a serious deterioration of the situation since the presidential elections, in particular because of amendments to the law on NGOs which give the authorities the possibility to close down in effect any NGO they don't like: running an unregistered NGO is normally just an administrative offence, but now they cannot any longer receive grants, a number of banks accounts were frozen and many NGOs are under investigation by the tax authorities, with their premises searched and equipment confiscated.

18. Grants are apparently considered to provide personal income to the people working in the NGOs and a number of leaders of well-known NGOs have recently been charged with tax evasion, illegal entrepreneurship and abuse of power, which are criminal offences (see section on subsequent events below). We would like to know when precisely these amendments were enacted and if they apply to past grants.

19. According to some opposition activists, there are also increasing limitations on freedom of movement: Ms Leyla Yunus, for example, complained bitterly that she was prevented together with her husband from leaving Baku for a conference in Brussels, and that their passports were illegally confiscated at the airport by the authorities.

20. According to the NGOs, the systemic problem of a lack of independence of the judiciary and a prosecution driven criminal justice (the conviction rate is around 98%), plus the large-scale corruption mean there is an almost complete lack of trust of the citizens in the judiciary.

21. Another problem is the low quality of law graduates and the ensuing lack of lawyers' professionalism. Finally, many judgments of the European Court of Human Rights are not executed or, if the person is re-tried following a violation of his right to a fair trial, the same sentence is again meted out to him.

22. According to the media representatives we met, there are currently 10 journalists and 10 bloggers behind bars on allegedly fabricated charges. Papers like Zerkalo, Azadlig or Yeni Musavat are strangled by heavy fines imposed on them for defamation, revenues from advertisement have fallen drastically due to political pressure from the authorities, and investigative journalism has become almost impossible because the authorities do not implement the 2005 law on access to information properly. Furthermore, amendments introduced in 2012 make it impossible to investigate companies, since tenders, names of shareholders etc. are now deemed "commercial secrets".

III. Functioning of the judiciary and law enforcement bodies

23. According to Amnesty International and Human Rights Watch, ever since Azerbaijan joined the Council of Europe in 2001, there have been allegations of politically motivated prosecutions against opposition members, journalists, human rights activists, lawyers, or, more recently, bloggers.

24. The authorities, including President Ilham Aliyev during his speech before the Parliamentary Assembly last April, flatly deny this.

25. We have tried again during our visit to convince our colleagues that, even supposing there was indeed no politically motivated prosecution, they need to do something about the widespread perception that there is one: there is no smoke without fire. Justice must not only been done, it must also be seen as being done.

26. The high conviction rate in criminal cases is not good for the reputation of the judiciary: it indicates a prosecution driven criminal system, where courts do not assess independently the evidence adduced by the prosecution and do not take sufficiently into account the rights of the accused. One blatant example is the Ilgar Mammadov case (see below the findings of the European Court of Human Rights).

27. Reform of the judiciary in Azerbaijan is still work in progress. We are fully aware that it requires not only a legal framework but also a change in mentality, which can only happen in the long run: this means training, and legal guarantees for judges, prosecutors and law enforcement personnel. We understand that it is not easy to build a functioning, competent and independent judiciary from more or less scratch.

28. The authorities have invested enormous amounts of time and money in refurbishing or building new court premises: we were shown the construction site of a new court building, the new provincial court administration building and a newly opened detention facility in Sheki. The new building housing the Supreme Court is impressive. Many temporary detention facilities of the police have also been upgraded throughout the country.

29. From the President of the Bar Association we heard that the number of barristers had risen from around 200 a few years ago to 1 000 today. All of them can plead in criminal cases throughout the country and may also represent clients before the Supreme and Constitutional Courts.

30. Still, for a population of 9 million, 1 000 barristers does not seem nearly enough. Around 2 000 lawyers without a bar exam can provide legal assistance if they have a power of attorney. The President of the Bar Association therefore proclaimed the NGOs' claim that maximum 10 lawyers in the country were willing to defend alleged politically motivated prosecutions a downright lie.

31. According to the Minister of Justice, the competences of the Judicial Legal Council (JLC) have been progressively increased since its creation in 2005. Giving it a constitutional foundation would require a referendum and it was thought this could wait until other major constitutional amendments needed to be made.

32. Salaries of judges, now better paid than prosecutors at the beginning of their career, cannot be reduced and the budget of the judiciary must be agreed by the JLC. Since 2000, when the new judiciary started to function, salaries have been increased 33 times.

33. 60% of the judges are newly appointed, and, according to the President of the Supreme Court, the selection procedure is transparent: examination tests are public and can be consulted on the internet.

34. In 90% of the cases brought before the civil courts, the claims brought by the citizens are satisfied. Administrative courts have been introduced in 2011 and 80% of the claims made are successful. In the field of criminal justice, there were 16 000 cases last year. The law obliges the Supreme Court to deal with civil cassation appeals within 2 months and with criminal appeals within 4 months. Cases are distributed among the 40 judges of the 4 chambers by random selection since 2002.

35. The Minister for Internal Affairs informed us that a special focus on human rights education had been included in the training programme of the police academy and that a telephone hotline for citizens had been set up. A Special Department for Internal Investigation has also been created: in the last 5 years, 1 524 police officers were punished: in 16 cases, criminal cases were instigated (which, according to NGOs is way too little), 100 people were removed, 97 demoted and 196 were subjected to disciplinary proceedings.

36. On the other hand, the Minister for Internal Affairs justified up to 60 days maximum of administrative detention as the only effective deterrent to breaches of the public peace. The fact that only 11 locations were available for public demonstrations in Baku, and mostly outside favourite public gatherings, he justified by saying all citizens needed to be protected from possible hooliganism and violence, the protesters included.

37. The National Action Plan to fight corruption is being implemented: the Prosecutor General's office (PGO) has recruited 100 new legal officers and a new electronic communication has been set up between the district prosecutors' offices and the PGO. 40 traffic police officers were fired last year for taking bribes.

IV. Subsequent events

38. On **16 May 2014**, just before our visit, journalist Parviz Hashimli was sentenced to 8 years of prison for arms smuggling and arms possession. **Amnesty considers him to be a prisoner of conscience.**

39. On **22 May 2014**, the European Court of Human Rights delivered its judgment in the case of Ilgar Mammadov v. Azerbaijan, fully vindicating his claims that the charges against him were not substantiated by the prosecution⁴, that therefore there was no "reasonable suspicion" justifying his arrest and pre-trial detention, and that the criminal procedure against him was in retaliation to critical public statements he had made.

⁴ The Court noted in particular that the applicant had been charged with organising mass disorder in Ismayili, although he arrived in the town one day after the riots erupted and stayed for only two hours.

40. The Court found a violation of Article 5 § 1 in that “the domestic courts consistently failed to verify the soundness of the suspicions underpinning the applicant’s arrest and repeatedly ignored his submissions in this regard: in all their decisions the domestic courts limited themselves to copying the prosecutor’s written submissions and using vague, short and stereotyped formulae for rejecting the applicant’s complaints as unsubstantiated”.
41. The Court also found a violation of Article 5 § 4 (right to judicial review of the pre-trial detention), because “in essence, the domestic courts limited their role to one of mere automatic endorsement of the prosecution’s requests”. The Court also found a violation of Article 6 § 2 (right to the presumption of innocence) because of official statements presenting Mr Mammadov as guilty even before he was brought to trial.
42. And finally, and this is very rare⁵, the Court found a violation of Article 18, which obliges States to act in good faith and prohibits them from restricting rights for purposes other than those prescribed in the Convention.
43. At the time of writing, this judgment was not yet final and can thus still be appealed to the Grand Chamber. But if and when it does become final (on 22 August), the authorities will be under the internationally binding obligation to execute it. We strongly hope that the authorities will now release Mr Mammadov, pending the outcome of the appeal procedure, although this has not been ordered by the ECHRt, contrary to what happened in the Fatullayev case.
44. On **26 May**, Anar Mammadli, chairman of a non-registered NGO, the Election Monitoring and Democracy Studies Center, and two of his associates were sentenced respectively to 5,5 years, 3,5 and 2 years suspended for tax evasion, illegal entrepreneurship and abuse of office. **Anar Mammadli is considered a prisoner of conscience by Amnesty.**
45. On **31 May**, Zerkalo stopped publication, citing financial reasons. Azadlig stopped its print publication on 1 August.
46. On **4 July**, another youth activist, Omar Mammadov, was sentenced to 5 years for drug possession with intention to sell. This brings the number of youth activists behind bars to 10, following the conviction of 9 activists from the NIDA movement to between 6 and 8 years of prison in May 2014.
47. On **9 July**, the appeal court confirmed the first instance verdict sentencing journalist Gurban Mammadov to 3 years in prison for infringement of traffic regulations and bribing.
48. On **14 July**, Hasan Huseynli, head of a NGO based in Ganja, was sentenced to 6 years in prison for hooliganism.
49. On **30 July**, Leyla Yunus, chairperson of the Institute for Peace and Democracy, was arrested and sent to pre-trial detention for 3 months on charges of treason, tax evasion, illegal entrepreneurship, fraud and abuse of office. Her husband, Arif Yunus, is in pre-trial detention on more or less the same charges since 5 August. Both have serious health problems. This case is linked to the treason charges brought against **Rauf Mirkadirov**, a journalist living and working in Turkey since 2010. He was arrested and remanded in custody on 21 April 2014.
50. On **3 August**, Rasul Jafarov, Chairman of the non-registered NGO Human Rights Club, was arrested and remanded in pre-trial detention for 3 months on charges of tax evasion, illegal entrepreneurship and abuse of office. **Following his arrest, Amnesty issued a statement saying that there were now “at least” 20 prisoners of conscience in Azerbaijan.**
51. On **5 August**, Emin Huseynov, the Chair of the Institute for Reporters’ Freedom and Safety (IFRS), was prevented by police from boarding a plane to Istanbul for scheduled medical treatment.
52. On **8 August**, the offices of IFRS were searched and equipment confiscated. His mother’s home was also searched. Prosecution authorities now want Mr Huseynov for interrogation.

⁵ There are only 4 precedents: one case against Russia, one against Moldova and two against Ukraine (including the case of Yulia Timoshenko).

53. On **8 August**, after a search carried out both in his office and at home, the Chairman of the Legal Education Society, lawyer Intigam Aliyev, was arrested and placed in pre-trial detention for 3 months on charges of tax evasion, abuse of power and illegal entrepreneurship.

54. We have met on numerous occasions over the past few years with many of the people mentioned above, and we are seriously concerned over their arrest and pre-trial detention. We wish to remind the authorities that freedom is the rule and detention the exception: we wonder therefore whether pre-trial detention is necessary in those cases relating to charges brought for running a non-registered NGO.

55. We are also seriously concerned over the treason charges brought against Leyla Yunus. Treason is a very serious accusation, especially at a moment when tensions over Nagorno-Karabakh are mounting again and there are numerous violations of the cease-fire agreement: more than 20 people have died since the end of July.

56. We expect the authorities to give Leyla Yunus a fair trial, in accordance with the ECHR. In this connection, we find it worrying, to say the least, that the day after her arrest the Prosecutor General's Office and the Ministry of National Security issued a joint press-release that presents her as guilty of the offences she is charged with. This press-release is clearly problematic from the point of view of the right to the presumption of innocence.

APPENDIX

Programme of the fact-finding visit to Baku and Sheki (19-21 May 2014)

Mr Joseph Debono Grech, Malta, Socialist Group
 Mr Pedro Agramunt, Spain, Group of the European People's Party

Monday 19 May 2014

- 09:00-10:15 Meeting with extra-parliamentary opposition parties(*): Mr Natic Jafarli, Republican Alternative (REAL) Movement and Mr Avaz Temirkhan, Liberal Party
- 10:30-11:45 Meeting with human rights defenders/lawyers(*)
- Ms Arzu Abdulayeva, Helsinki Citizens Assembly
 - Ms Saida Godjamanli, Bureau of Human Rights and Law Respect
 - Ms Saadat Benanyarli, Azerbaijan National Group of International Human Rights Society
 - Ms Novella Jafarova, Society for Protection of Women's Rights
 - Mr Eldar Zeynalov, Human Rights Centre
 - Mr Fuad Agayev, Agayev & Zoulfugarzadeh law firm
 - Mr Intigam Aliyev, Legal Education Society
 - Mr Turgut Gambar, NIDA movement
 - Mr Bashir Suleymanli, EMDSC
- 12:00-13:00 Meeting with media representatives(*)
- Mr Rauf Arifoglu, "Yeni Musavat" newspaper
 - Mr Rashid Hajili, Media Rights Institute
 - Ms Khadija Ismayilova, Radio Free Liberty
 - Mr Elchin Shikhli, "Zerkalo" newspaper
 - Mr Emin Huseynov, Institute for Reporters Freedom and Safety
 - Mr Mehman Aliyev, Turan agency
 - Mr Rauf Talishinski, "Echo" newspaper
 - Mr Bahaddin Haziyeu, "Bizim Yol" newspaper
- 13:00-14:00 Lunch
- 14:15-15:15 Meeting with Mr Zakir Garalov, Prosecutor General
- 15:30-16:45 Meeting with Mr Fikrat Mammadov, Minister for Justice and Chairman of Judicial Legal Council
- 17:00-18:00 Meeting with Mr Ramil Usubov, Minister for Internal Affairs

Tuesday 20 May 2014

- 10:30-11:30 Meeting with Ms Leyla Yunus, Institute for Peace and Democracy(*)
- 11:45-12:45 Meeting with Mr Ali Huseynli, Chairman of Parliamentary Committee on Law Policy and State-building
- 12:45-14:15 Lunch
- 14:15-15:45 Meeting with leaders of political parties in Milli Mejlis
- 15:45-17:00 Meeting with members of Azerbaijani Delegation to PACE
- 17:00-18:00 Meeting with Mr Ziyafat Asgarov, Vice-Chairman of Milli Mejlis

Wednesday 21 May 2014

- 10:45-11:45 Meeting with Mr Azar Taghiyev, Chairman of Presidium of Bar Association
- 12:00-13:00 Meeting with Mr Ramiz Rzayev, Chairman of Supreme Court
- 13:30-14:30 Meeting with Mr Ramiz Mehdiyev, Head of the Presidential Administration
- 15:00 Departure to Sheki
- 16:30-17:30 Meeting with Mr Ilgar Mammadov, Chairman of Republican Alternative (REAL) Movement in Sheki prison
- 18.30 Return to Baku

(*) organised by Council of Europe Office in Baku