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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 (31 January – 2 February 2012)<sup>1</sup>**

Co-rapporteurs: Mr Pedro AGRAMUNT FONT DE MORA, Spain, Group of the European People's Party, and Mr Joseph DEBONO GRECH, Malta, Socialist Group

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<sup>1</sup> This information note has been made public by decision of the Monitoring Committee dated 24 April 2012.

## I. Introduction

1. We visited Azerbaijan from 31 January to 2 February 2012. This was our second joint visit as co-rapporteurs in the framework of the monitoring process.<sup>2</sup>
2. With regard to the ongoing monitoring procedure, the last debate on the functioning of democratic institutions in Azerbaijan took place in the Parliamentary Assembly in June 2010.<sup>3</sup> The most recent full monitoring report dates back to 2007.<sup>4</sup>
3. Our intention is to prepare a report on the honouring of Azerbaijan's obligations and commitments for the committee's consideration later in 2012. Before the final adoption in the committee, we would like to make another visit to the country with a view to discussing with the authorities the concerns included in the draft report, and possible measures to be taken in order to improve the situation. We are convinced that this would be the best way to encourage democratic progress in the country.
4. With the above timeline in mind, during our visit we focused on the state of implementation of different commitments and obligations, but we also had a meaningful political dialogue with the authorities with regard to the major concerns. In this respect, we wish to stress that the cooperation of the Azerbaijani authorities and the Azerbaijani parliamentary delegation to the Assembly was excellent.
5. We met a number of high officials including the Minister of Justice, the Prosecutor General, the Head of the Presidential Administration, the Chairman of the Supreme Court, as well as the Ombudsperson. In the Milli Mejlis (Parliament), we met the Chairman and leaders of political parties which have parliamentary representation. We visited the refugee settlement hosting refugees and displaced persons from the Nagorno-Karabakh region and we held an exchange of views with the Deputy Head of the State Committee for Refugees and IDPs.
6. Unfortunately, the originally planned visit to Guba and meetings with regional and local legislative and executive authorities as well as representatives of the local civil society, had to be cancelled because of unfavourable weather conditions.
7. We also held a series of meetings with leaders of major extra parliamentary opposition parties: the Musavat Party, the Popular Front Party, the Democratic Party and the Liberal Party. We noted with satisfaction that the leaders of the Musavat Party and the Popular Front Party, who had refused to meet the representatives of the Council of Europe during the pre-electoral mission of the PACE's ad hoc Committee on the Observation of Elections in 2010, and the rapporteurs on the monitoring of obligations and commitments during our previous visit to Baku in January 2011, had changed their position and we had an interesting exchange of views on the situation in the country.
8. Furthermore, we met a number of representatives of non-governmental organisations (NGOs) active in the areas of human rights, democracy and political pluralism as well as media environment.
9. Finally, we visited Prison No 17 in Baku, where we met two people arrested following the demonstration of 2 April 2011, and convicted to respectively 2 and 2.5 years of imprisonment. Moreover, we held a meeting with Prof. Jamil Hasanli, representing Mr Fahhrad Alliev, a former Minister of the Economy, imprisoned since 2005, and his brother, Mr Tarrik Alliev.
10. 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 and opposition parties.

## II. State of democracy

11. In the information note following the previous visit<sup>5</sup>, we expressed our concern about the existing political environment and the lack of a meaningful political dialogue between the ruling forces and the extra-parliamentary opposition. The representatives of the authorities emphasised that this lack of a political

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<sup>2</sup> 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. Their first visit took place on 1-3 February 2011.

<sup>3</sup> See Doc. 12270 and Resolution 1750 (2010)

<sup>4</sup> See Doc. 11226 and Resolution 1545 (2007)

<sup>5</sup> See As/Mon(2011)07rev.

dialogue is due only to the unconstructive approach of the extra-parliamentary opposition, who do not wish to start up such a dialogue, despite the repeated invitations by the majority political party.

12. As a result of the 2010 parliamentary elections, the ruling force, the Yeni Azerbaijani Party, has 71 out of 125 seats in the parliament. The remaining seats are divided between ten political parties and independent candidates, who often support the ruling party, but are also sometimes critical towards the authorities.

13. The main opposition parties, the Musavat Party and the Popular Front Party, which contested the last parliamentary elections, did not win any seats. We refer to our previous information note (AS/Mon(2011)07rev) with regard to the observation of the parliamentary elections by the ad hoc Committee of the Bureau.<sup>6</sup>

14. Following their defeat in the 2010 elections, on 28 December 2010, candidates from the main extra-parliamentary opposition parties created a new Civic Movement for Democracy, the so-called Public Chamber. This major opposition bloc includes the leaders of the Musavat and the Azerbaijan Popular Front Party, as well as leaders of eight other political parties and representatives of civil society. The declared objective of the Public Chamber is to promote democratisation and alternative solutions to the country's concerns. In the statement published following the session in January 2012, the Public Chamber set the main targets for its actions: ensuring human rights and freedom of assembly, and creating conditions for elections which would fully comply with democratic standards.

15. The Public Chamber does not regroup the whole extra-parliamentary opposition. On 12 January 2012, representatives of five extra-parliamentary opposition parties (the Classical Popular Front Party, Aydinlar, the Open Society, the Liberal Democratic Party and Azadliq) created a new Resistance Movement for a Democratic Society. Its declared objective is to reform election legislation and create conditions for holding elections that comply with democratic standards, to combat corruption and to find a solution to the Nagorno-Karabakh question.

16. The new movement is ready to cooperate with the Public Chamber and both blocs are currently negotiating possible unification. However, there are differences concerning the assessment of the situation and strategy to be adopted.

17. During our meetings, the representatives of the extra-parliamentary opposition complained about the continuing restrictive climate for their activities. In particular, they raised questions concerning the funding of political parties, serious problems relating to logistical facilities (including difficulties to rent premises for a headquarters and locations for regional branches), limitations on freedom of expression, including lack of access to public TV, and on freedom of assembly, intimidation, harassment and in some cases even persecution of members and supporters.

18. In this context, they referred to the planned amendments to the 2004 Law on political parties, which have been proposed by the government. Indeed, a public and parliamentary debate on the shortcomings of the present legislation would allow concerns to be addressed and legislative changes to be introduced to improve the situation.

19. In December 2011, the European Commission for Democracy through Law (Venice Commission) adopted its opinion on these amendments at the request of the government.<sup>7</sup> We wish to express here our satisfaction that the government decided to seek the Venice Commission's expertise and we hope that it will take into account the Commission's conclusions.

20. The Venice Commission had already provided an opinion and identified a number of concerns in the original law on political parties in 2004. Unfortunately, the proposed amendments have not addressed the identified shortcomings.

21. In particular, the question of the transparency of funding and spending of parties' funds and private donations, already raised by the Venice Commission in its opinion in 2004, has not been addressed in the draft amendments. And yet this is a major concern, which may lead to corruption and creates unfair conditions for party competition. More generally, party financing remains a problem and results in an uneven playing field, which to a large extent hinders the opposition parties' chances for a fair competition.

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<sup>6</sup> See Doc. 12475

<sup>7</sup> See Opinion No 631/2011

22. While not addressing earlier concerns, some of the proposed amendments introduce new regulations which have been criticised in the Venice Commission's opinion. In particular, the increase in the minimum membership of a political party from 1000 to 5000 is considered by the experts as unjustified in a country of a population of less than 9 million. They point out that the new threshold seems to be formidably high, and is potentially restrictive. During our last visit, we also emphasised the importance of correcting such an important legal provision. According to very recent information from the authorities, this provision was finally removed from the draft law. We very much welcome this news.

23. Some other amendments, if adopted, risk eliminating from political existence parties defending the rights of ethnic minorities. So far, it is also still not clear which body would be responsible for possible dissolution of parties not complying with the law, and the impartiality and independence of this body should be guaranteed.

24. The creation of an inclusive political system and an environment favouring the establishment of political pluralism is particularly important in view of the forthcoming presidential elections scheduled for 2013. There is still time to address a number of concerns raised on many occasions by the opposition and the civil society as well as by the international community, including the Parliamentary Assembly and other bodies of the Council of Europe.

25. In particular, legal recommendations by the Venice Commission with regard to the Electoral Code, pointing to serious deficiencies in the registration of candidates, the composition of electoral commissions, unequal conditions for electoral campaigns, legal remedies against decisions on election-related complaints, should be addressed without further delay and in time for the next election.

26. Recently, the ECHR has delivered decisions in seven cases (out of 35 considered admissible) relating to the 2005 parliamentary elections in Azerbaijan, where it found a violation of Article 3 of Protocol No. 1 (right to free elections).<sup>8</sup> Five of them concerned complaints about the arbitrary invalidation of election results in the applicants' electoral constituency depriving them of their victory submitted, inter alia, by the leaders of the opposition parties. Another one concerned a complaint about an arbitrary and ineffective examination of the applicant's complaints about election irregularities. Seven other similar applications were struck out by the Court after this judgment, following a unilateral declaration by the Government acknowledging the violations. The last judgment concerned the arbitrary refusal to register the applicant as a candidate for parliamentary elections.

27. A number of applications concerning the elections in 2010 are pending before the Court.

28. Furthermore, the outstanding concerns relating to limitations on freedoms and human rights abuses, which we will look at in the next chapter, should be addressed so as to create a truly competitive and unrestrictive political environment promoting party pluralism.

29. Once again we would like to stress here our 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 the parliamentary framework.

### **III. Human rights and freedoms**

#### *i. Allegations of torture and other ill-treatment*

30. Cases of torture and other ill-treatment remain an issue of concern in Azerbaijan. There have been several alarming reports by human rights defenders and domestic and international NGOs about alleged cases of torture or ill-treatment of persons in custody. On our specific demand, representatives of the authorities assured us that law enforcement agencies take all necessary measures in order to investigate these allegations.

31. According to the most recent reports, several activists detained in connection with the protests in March and April 2011, complained of ill-treatment in custody. To date, none of these allegations have been properly documented or effectively investigated. According to representatives of the authorities, no official complaints were received so far in this regard.

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<sup>8</sup> Kerimova v. Azerbaijan (30.09.2010); Namat Aliev v. Azerbaijan (08.04.2010); Seyidzade v. Azerbaijan (08.04.2010); Kerimli v. Azerbaijan (10 January 2012); Hajili v. Azerbaijan (10 January 2012); Alibeyli v. Azerbaijan (10 January 2012), Jalaloglu (10 January 2012).

32. As mentioned in previous reports, allegations of ill-treatment were confirmed by several judgments of the ECHR between 2007 and 2009. The Court has found Azerbaijan guilty of violations of Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment).<sup>9</sup>

33. There is no information so far as to whether these judgments have led to any accountability, but we were informed that proceedings for the execution of these judgments are pending and can be expected.

34. The most recent report on Azerbaijan was published by the CPT in 2008. In December 2011 the CPT made its periodic visit to Azerbaijan and their report is expected to be prepared later this year. In this regard, we welcome the National Programme for Action, approved by the President of Azerbaijan on 27 December 2011, which raises the effectiveness of the protection of human rights and freedoms. This Programme provides for stronger measures to investigate cases of violation of human rights of persons in custody, including cases of torture, ill-treatment and abuse. It also provides for the adoption of a new law on the rights of arrested persons and training for judges and law enforcement officers.

*ii. Freedom of expression*

35. According to information provided by civil society organisations and the extra-parliamentary opposition, the situation in the field of freedom of expression has not improved. They complained in particular about the State control of the broadcast media, limited diversity in the print media, control of the electronic media, criminalisation of defamation and repressive use of the defamation law. They also complained about intimidation of journalists. In reply, the government informed us that more than 4 700 different media outlets are active in the country, including 40 daily and more than 200 weekly or monthly newspapers, as well as 50 information agencies. According to their information, there are also nine nation-wide, one satellite, 14 regional and 14 cable TV channels, and more than 30 internet providers functioning in Azerbaijan, without any possible interference or pressure by the Azeri authorities.

36. The intimidation of journalists remains a real threat to freedom of the press. According to the 2012 Human Rights World Report on Azerbaijan, there were more than 50 reports of alleged harassment or attacks on journalists in 2011.

37. For example, on 26 March 2011, Mr Seymur Haziyevev, a journalist from the opposition newspaper *Azadliq*, was reportedly abducted and beaten by six masked assailants. According to his report, his abductors warned him against writing critical articles. His case has recently been sent back by the Court of Appeal for additional investigation. We have insisted to the authorities that this case should be clarified.

38. On 2 April 2011, several journalists covering the anti-government protests were prevented by law enforcement officials from photographing and interviewing participants, and then detained.

39. On 3 April 2011, another journalist from *Azadliq*, Mr Ramin Deko, was reportedly abducted, warned not to write critical articles, and physically assaulted.

40. On 7 March 2012, the investigative reporter of Radio Free Europe, Ms Khadija Ismailova, who has been investigating claims of a possible conflict of interest regarding a lucrative construction project in Baku, received a letter with some intimate pictures of her taken from hidden cameras in her apartment and a threat that they would be published on the internet if she did not halt her investigation. She publicly exposed this blackmail attempt, which resulted in the video's publication. The authorities also publicly condemned the publication of that video. According to information received, the Office of the Prosecutor General has started a criminal investigation into Ms Ismailova's complaint, which is still underway. So far, a criminal investigation has been opened but nobody has been brought to justice yet.

41. According to our interlocutors representing a part of the civil society, a number of activists are currently detained in Azerbaijan. The Council of Europe Commissioner, in his report on Azerbaijan<sup>10</sup>, states that fabricated charges have been used to arrest and silence parliamentary candidates, journalists and members of youth groups. However, within the civil society organisations, there is a strong disagreement on any exact names and numbers of such detained activists, because there is a lack of clear criteria, according to them. However, in 2004, the Council of Europe Committee of Ministers approved a document, drawn up in 2001, with five criteria. The Parliamentary Assembly never in fact adopted this document, but it has

<sup>9</sup> See for example *Hummatov v. Azerbaijan* (20.11.2007); *Mammadov (Jalaloglu) v. Azerbaijan* (11.01.2007); *Mikayil Mammadov v. Azerbaijan* (17.12.2009).

<sup>10</sup> The last report of the Council of Europe Commissioner for Human Rights was published in March 2010. The follow-up report was published in September 2011.

been referred to in several reports. This question is currently pending before the PACE's Committee on Legal Affairs and Human Rights<sup>11</sup> because, during hearings in January 2012, all the Azeri civil society organisations present stressed the urgent need for a clear definition, stating that the above-mentioned criteria are too general and allow for different interpretations. As rapporteurs of the Monitoring Committee, we are not able to give an opinion on a current legal affairs discussion, within this fact-finding report.

42. For example, on 4 May 2011, Mr Jabbar Savalan, a member of the youth group of the Azerbaijan Popular Front Party, was sentenced to 2.5 years' imprisonment on drug possession charges. This happened soon after he had posted several critical comments against the authorities and called for protests via social networks. Several NGOs have voiced their concerns about what they consider to be fabricated charges. We note with satisfaction, after our repeated requests, that Mr Savalan was pardoned by Presidential Decree of 26 December 2011 and was released.

43. More recently, on 27 August 2011, Mr Vidadi Iskenderov, another candidate in the 2010 elections, was sentenced to three years' imprisonment on charges of interference with parliamentary elections. He had earlier spoken out about fraud during those elections.

44. Furthermore, an important step for the protection of the freedom of expression would be to decriminalise defamation. We welcome the above-mentioned National Programme of Action, which also provides for amendment of the existing legislation with the aim of decriminalising defamation, as libel in Azerbaijan is today still considered a criminal offence. According Human Rights Watch, in the first half of 2011, there were seven libel cases against journalist.<sup>12</sup> The authorities however state that, since the European Court's decision of 2010 on Fatullayev's case, not one single journalist has been imprisoned for libel.

45. During our visit, we were told that the Azerbaijani authorities had launched a public debate on the new law on defamation in compliance with Council of Europe standards, with a view to adopting it in the course of 2012.

46. Whereas the Council of Europe Commissioner has also received reports that journalists were prevented from carrying out their work while investigating the recent death of a man in custody in the Autonomous Republic of Nakhchivan, we did not visit that region and therefore were unable to establish any facts on that issue.

47. As a part of the broader campaign against those who raise critical voices, pressure is also put on the activities of independent lawyers and human rights defenders.

48. Several lawyers have been openly warned not to defend the rights of those detained. The following cases may illustrate the problem of such harassment: a criminal case was opened against one lawyer, Mr Khalid Bagirov, on charges of defamation for having disseminated information in the media about alleged police involvement in the ill-treatment and death of Mr Elvin Askarov. However, we note with satisfaction that the case was terminated by the district court in April 2011.

49. On 4 February 2011, a well-known defence lawyer, Mr Osman Kazimov, was temporarily suspended from practising as a legal counsel by the Azerbaijani Bar Association, following accusations of illegal acts in a criminal case. Later, however, he continued practicing as a legal counsel.

50. On another positive note, in May 2011, Mr Eynulla Fatullayev, an opposition journalist, and six other detained journalists and human rights defenders, were pardoned by the President and released. As was the case in 2011, we repeatedly urged for more releases, we therefore welcomed the Presidential Decrees of 26 December 2011 and 15 March 2012, where the President pardoned five more people whose cases were on the agenda of NGOs, including Mr Savalan, as well as Mr. Ruslan Bashirli, Chairman of "Yeni fikir", the youth organisation of the Popular Front Party, and Mr Elnur Israfilov, who was convicted after the demonstration of 2 April 2011.

### *iii. Freedom of assembly*

51. Freedom of assembly in Azerbaijan is treated in the "Law on Freedom of Assembly". Changes made to this law on 30 May 2008, clarified the position of the executive authorities regarding this right and individual

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<sup>11</sup> Report under preparation by Mr Christoph Strässer (SOC), "Revisiting the issue of political prisoners", Committee for Legal Affairs and Human Rights, PACE

<sup>12</sup> Human Rights Watch, World report 2012: Azerbaijan

responsibility for its violation. In case the right of freedom of assembly is violated, the protection of rights and the form of indemnity are defined, as well as the procedure of complaint before the court. Those changes were adopted as a result of the implementation of an opinion by the OSCE and the Venice Commission of the Council of Europe. Nevertheless, problems still exist in the application of the law, and in practice. Since early 2006, the local authorities in Baku have systematically prohibited public gatherings in the city centre on the grounds that they would disturb the public order and the security of the population, as since 2006 massive construction works are occurring in the downtown area. For this reason, public gatherings are directed to officially designated areas outside the city centre. Nevertheless, the Council of Europe Commissioner publicly criticised this method of restricting the freedom of assembly.

52. Particular concerns were raised in March and April 2011, when several arrests of activists took place in connection with protest demonstrations held in Baku. Following unauthorised demonstrations on 11 March and 2 April 2011, approximately 200 people were detained, including the leader of the Youth Organisation of the Musavat Party, Mr Tural Abbasli.<sup>13</sup> Most of the detained persons were quickly released. According to the activists, the protests were sometimes dispersed with excessive force, and the work of journalists was hindered. According to the authorities, 13 police officers were injured, more than 20 vehicles were damaged and the windows of 17 shops and banks were broken by protesters. Video footage confirms to a certain extent the allegations from both sides.

53. On 11 and 12 March 2011, the Azerbaijani courts sentenced at least 30 people to between 5 and 8 days of administrative arrest on grounds of violating public order or hooliganism. According to some reports, several defendants did not have access to the legal counsel of their choice and the detainees were prevented from contacting their lawyers.

54. Furthermore, 14 opposition activists were sentenced to between 1.5 to 3 years' imprisonment on criminal charges for participating in "actions causing disturbance of public order" following trials, whose conformity with human right standards has been called into question by some NGO's and human rights defenders. As mentioned above, one of the activists, Mr Elnur Israfilov, was released. Mr Elshan Hasanov was also conditionally released by a domestic court. We were also informed that the courts are currently examining the conditional release of Mr Elnur Majidli and Mr Arif Alishli. During our visit, we insisted that all cases related to those demonstrations should have a positive outcome very soon.

55. During our visit, we met two imprisoned activists, members of the Musavat and the Popular Front Parties, sentenced respectively to two and three years for vandalism. They described to us the circumstances in which they were detained, confirming the concerns raised by the domestic and international civil society.

56. During our visit, we systematically raised the question of detained protesters in our discussions with the authorities, pointing out the need to review all these cases, and, more generally, to change restrictive policies.

57. We received feedback which allows for some optimism and we look forward to the follow-up to our discussions. We strongly believe that this issue should be dealt with in the framework of the monitoring procedure on the basis of the established political dialogue. For example, we were very recently informed that on 17 March and 8 April 2012, two rallies by the youth organisations of the opposition parties and the Public Chamber took place in Baku. The exact place and time of the gatherings was coordinated with the authorities and no incidents were reported. We welcome this positive development.

58. We also wish to recall that the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Venice Commission have published jointly a set of Guidelines on Freedom of Peaceful Assembly which should serve as a useful tool for legislators and authorities.

#### *iv. Freedom of association*

59. According to the authorities, more than 2.700 NGO's are registered in Azerbaijan. Recently, the procedure of registration has been simplified and the term of consideration by the authorities of application documents has been shortened. However, a further simplification was put on the agenda. Nevertheless, the question of registration of non-governmental organisations remains a concern. The amendments to the law on NGOs, adopted on 9 June 2009, introduced a number of provisions with possible restrictive effects, including the provision barring foreign NGOs from operating unless their activities are based on a formal

<sup>13</sup> According to NGOs, almost 400 people were detained (see : <http://humanrightshouse.org/articles/16215.html>)

international agreement. The procedure for concluding such agreements, which was announced by the government in a Decree published only on 16 March 2011, remains unclear.

60. And yet, on 10 March 2011, the branch of the Human Rights House Foundation in Azerbaijan was closed following the notification from the Registration Department of the Ministry of Justice, which stated that the Human Rights House had not concluded any agreement with that Ministry as required by the amendments to the law on NGOs.

61. Moreover, according to the requirements defined in the Decree, international organisations must respect “national and moral values” and not be involved in “political or religious propaganda”. These terms are too vague and may be subject to misinterpretation.

62. On 3 October 2011, the Council of Europe Conference of INGOs criticised the amendments to the law on NGOs and adopted a recommendation in which it called on the Azerbaijani authorities to revise this law.

63. In its legal opinion, delivered in October 2011, the Venice Commission identifies a number of problems referring primarily to the registration process. It says that the 2009 amendments and the 2011 Decree overturn the previous efforts to meet with the requirements of international standards.

64. Moreover, over the past several months, national and international NGOs have faced difficulties in freely carrying out their activities. However, most of them are now functioning within the legal framework and the agreed mandate. Finally, some civil society organisations made complaints about threats and harassment against their members. We could not confirm the authenticity of these allegations, but we believe that the considerations raised in the previous chapter are directly linked to the activities of the civil society in Azerbaijan.

v. *Freedom of religion*

65. The amendments to the Law on Freedom of Religion adopted in June 2010, introduced the obligation for a certain number of religious communities, formerly registered, to re-register.

66. The last report of the European Commission against Racism and Intolerance (ECRI), published in March 2011, notes that restrictive provisions and practices have been tightened and some religious communities have not yet been able to re-register. Those communities, whose applications are still pending, remain in a state of legal uncertainty as to whether they can exercise their religious activities. Representatives of the authorities noted that some of those communities are radical Islamic organisations.

67. The problem is well illustrated by an incident which took place in June 2011, when police closed a private meeting of 40 Jehovah’s Witnesses in Ganja, detaining and questioning participants for up to ten hours and fining three of them. The Jehovah’s Witnesses community in Ganja has unsuccessfully attempted to register twice since June 2010.

vi. *Illegal house demolitions and forced evictions*

68. The Baku mayor’s office began a reconstruction and resettlement campaign in 2009 in order to build a “garden-park” complex, among other construction projects, as part of a new urbanisation programme. Those residents who refused financial compensations or a resettlement proposal have been forcibly evicted. According to the authorities, some dissatisfaction emerged with regard to the amount of the financial compensation given, but a large majority of the residents agreed with the standard financial proposal.

69. Although we did not meet with any directly concerned residents, during our meetings with representatives of the civil society, strong criticism was voiced by them in this respect. The concerns are multifold: firstly, compensation in many cases is far below market value for property in central Baku. There is a single financial compensation of 1 900 USD per square meter, (with the exception of architecturally interesting or historical buildings), irrespective of a property’s use, age or condition, but the authorities emphasised to us that the premises to be destroyed are mostly old and dilapidated. On the other hand, it is true that some independent appraisals have valued properties in central Baku at 5 000 USD per square meter, and in some cases even more, but during our discussions it became clear that such prices only concerned well located apartments in newly constructed buildings.

70. Secondly, the whole process lacks transparency and accountability. Long-term planning is not public enough, there is not enough public access to documentation, the procedure and decision-making process are unclear, inhabitants are sometimes forced to leave their homes at a very short notice.

71. Finally, forced evictions are against the Azerbaijani law in force, which guarantees the right to private property and allows the state to expropriate property only in limited cases, such as for national defence or communication infrastructure. Expropriations must be based on a court order.

72. On 12 August 2011, the private building where the apartment of Ms Leyla Yunus, a well-known human rights activist, is situated, and which is also the location of her Institute of Peace and Democracy, was bulldozed. We were told that her staff had not been allowed to evacuate office material (computers, etc). Official sources called this allegation preposterous and stated that Ms Yunus herself had repeatedly refused to evacuate this material in order to get more international publicity and support for her political protest action. Ms Yunus estimated her building's market value at 625 000 USD, whereas the authorities emphasised that her apartment with the IPD-office had measured only 85 m<sup>2</sup>, thus her financial demand exceeded 7,300 USD per m<sup>2</sup>. She openly disagreed with the standard financial compensation. According to the authorities, an individual claim with regard to the amount of financial compensation, can only be resolved through a civil law procedure, with the possibility of appeal at all possible court levels of the judicial system, including an appeal to the Supreme Court.

73. However the EU delegation in Baku, Human Rights Watch and other international NGOs released statements deploring the damage to Ms Yunus' organisation's office.

74. The representatives of the authorities with whom we raised this question, referred to the constitutional law which provides for expropriation based on the need of State. According to their interpretation, the large-scale reconstruction of the capital accounts for such a need. The plans for the reconstruction are public.

75. They also stated that most of the residents who had lived in the same area had been satisfied with the standard financial compensation, as the real market value was even lower. In the opinion of the authorities, the complaints by Ms Yunus were only used by her as an opportunity to make a public provocation, calling on international support for her political activities.

76. For any future eviction programmes, the government should ensure a fully transparent process that is clearly provided for in law, and an effective means for registering complaints.

#### *vii. Refugees and displaced persons*

77. When speaking about the situation in Azerbaijan, we cannot ignore the fact that this country, with a population of nine million, is confronted with the problem of up to one million displaced persons, including refugees and internally displaced persons.

78. The conflict over the Nagorno-Karabakh region is not over; it is not even "frozen": according to official figures, every year people in Azerbaijan are killed and injured on the front line, in 2011 respectively 12 and 34 people, in 2010: 17 and 32.

79. The Assembly took position on the conflict in Nagorno-Karabakh in Resolution 1416 (2005); so far, unfortunately, the recommendations contained therein have not been fulfilled. The Azeri authorities emphasise that with respect to this Resolution, all the remaining obligations are to be fulfilled only by the Armenian side. They strongly regret the total tolerance of the Parliamentary Assembly towards the non-fulfillment by Armenia of these clearly stipulated obligations, and towards the Armenian refusal to even be present at the Bureau's ad hoc Committee on implementation of that Resolution (See AS/Bur/AdhocNK(2011)01).

#### **IV. Conclusions**

80. The visit provided us with the opportunity to receive first-hand information on the situation in Azerbaijan with regard to the state of fulfillment of obligations and commitments. On the one hand, we were directly informed of concerns of the civil society and the opposition, and on the other, we could immediately discuss these outstanding issues with the authorities. This allowed us to establish a constructive dialogue which hopefully will bring about some positive results.

81. It is important that democratic progress be accomplished in time for the forthcoming presidential election in 2013, in order to allow for a truly pluralist competition in an unrestrictive political environment.

82. In particular, we hope that the authorities will follow the Venice Commission's conclusions and recommendations with regard to the necessary changes in the Electoral Code, the law on political parties

and the law on NGOs with a view to putting them in line with European standards. In this regard, we welcome the above-mentioned National Programme for Action to raise the effectiveness of protection of human rights and freedoms in Azerbaijan, and we express our hope that it will bring about further progress in that field.

83. We also encourage the authorities to continue the application of the Guidelines on Freedom of Peaceful Assembly, drawn up jointly by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Venice Commission.

84. More generally, we strongly recommend the introduction of a more liberal and less restrictive interpretation of laws referring to human rights and freedoms, with a view to establishing a political environment fostering pluralism and a more inclusive political process.

85. Last but not least, being a very important part of the daily follow-up of our monitoring mission, we very much count on the authorities' positively changed attitude with regard to any possible prisoners whose cases are on the agenda of NGOs and human rights defenders and to the possible revision of their cases, in compliance with Azerbaijani legal procedure.

86. We look forward to the continuation of our dialogue during the next visit in June 2012.

APPENDIX

**Programme of the fact-finding visit to Baku (31 January – 2 February 2012)**

Mr Pedro AGRAMUNT FONT DE MORA, Senator  
Mr Joseph DEBONO GRECH, Member of Parliament

**Tuesday 31 January 2012**

- 09:00-12:00 Meetings with representatives of opposition parties not represented in the Parliament (Musavat Party, Popular Front Party, Democratic Party, Liberal Party)
- 12:00-14:00 Meeting with representatives of NGOs and media representatives
- 14:30-15:30 Meeting with Mrs Elmira SULEYMANOVA, Ombudsperson
- 15:45-16:45 Meeting with Mr Zakir GARALOV, Prosecutor General
- 17:00-18:00 Meeting with Mr Ramiz RZAYEV, Chairman of Supreme Court

**Wednesday 1 February 2012**

- 10:00-12:00 Meeting with the leaders of political fractions in Milli Mejlis
- 12:00-13:00 Meeting with the members of Azerbaijani Delegation to PACE
- 14:15-15:15 Meeting with Mr Fikrat MAMMADOV, Minister of Justice
- 15:30-16:30 Meeting with Mr Ramiz MEHDIYEV, Head of the Presidential Administration

**Thursday 2 February 2012**

- 10:00-11:00 Meeting with Mr Ogtay ASADOV, Chairman of Milli Mejlis
- 12:00 Visit to the Refugee settlement  
Meeting with the Deputy Head of the State Committee for Refugees and IDPs
- 15:00 Visit to prison No. 17 in Baku
- 18:00 Press conference