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The challenge of still unratified credentials of the parliamentary delegation of Azerbaijan on substantial grounds

Report

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

Rapporteur: Mr Tony Lloyd, United Kingdom, Socialist Group

Summary

At the opening of the first 2006 part-session of the Parliamentary Assembly on Monday 23 January 2006, the credentials of the Azeri delegation were challenged on substantial grounds under Rule 8 of the Assembly Rules of Procedures in connection with the parliamentary elections that took place on 6 November 2005.

In its Resolution 1456 (2005) on the functioning of democratic institutions in Azerbaijan, the Assembly had warned that it would regard the 2005 parliamentary elections as a decisive test for the democratic credibility of the country. Regrettably, like all previous ballots held since Azerbaijan's accession to the Council of Europe in 2001, the parliamentary elections held on 6 November 2005 once again did not meet international standards.

The report sets out a series of measures that Azerbaijan urgently needs to take in order to restore confidence in the democratic process, ahead of the re-run elections on 13 May in the 10 constituencies where results were annulled.

It is proposed that the Assembly ratifies the credentials of the parliamentary delegation of Azerbaijan. At the same time, the Monitoring Committee should submit to the Assembly at its June 2006 part-session a report on the progress made on all the measures recommended in this report in order to consider whether Rule 9 of the Rules of Procedure on the reconsideration of previously ratified credentials on substantial grounds should be applied.

¹ This revised version concerns only the summary.

I. Draft resolution

1. At the opening of the first 2006 part-session of the Parliamentary Assembly on Monday 23 January 2006, the credentials of the Azeri delegation were challenged on substantial grounds under Rule 8 of the Assembly Rules of Procedures in connection with the parliamentary elections that took place on 6 November 2005.

2. In its Resolution 1456 (2005) on the functioning of democratic institutions in Azerbaijan, the Assembly had warned that it would regard the 2005 parliamentary elections as a decisive test for the democratic credibility of the country as all previous ballots held since Azerbaijan's accession to the Council of Europe in 2001 had failed to meet basic democratic standards.

3. The Assembly deeply regrets that the parliamentary elections in Azerbaijan on 6 November 2005 once again did not meet international standards. The most unacceptable violations found by the *ad hoc* Committee which observed the elections were: intimidation and arbitrary arrests of opposition candidates and supporters; impediments to the right to peaceful assembly; disproportionate use of force by the police in dispersing unauthorised rallies; interference of local authorities in the electoral process; abuse of administrative resources; ballot stuffing; and serious violations during the counting and tabulation of results. The media bias and the lack of impartiality of the election commissions also contributed to creating unfavourable conditions for free and fair elections.

4. The Assembly deplores the excessive use of force by the police to disperse a post-electoral opposition rally in Baku on 26 November 2005. The means used against peaceful protesters, including many women and children, are unacceptable in a civilised society.

5. The Assembly notes that the Central Election Commission and the Constitutional Court invalidated the results in 10 constituencies (out of 125), where rerun elections will be held on 13 May. It also takes note of the dismissals of the heads of the executive power in three regions and of the limited number of criminal cases that are currently pending before the courts.

6. Administrative and legal measures however cannot repair the serious damage caused by the violations: the fact that the entire democratic process has been undermined, that political dialogue is jeopardised and that the newly elected parliament lacks the democratic credentials of the Azeri people.

7. The attitude of the opposition, which intends to boycott the parliamentary sittings and the rerun elections, is not constructive either and is not conducive to the development of the democratic process. The Assembly considers that the place of the opposition is in Parliament, not on the streets and it therefore urges the opposition to reconsider its decisions.

8. Free and fair elections are at the basis of democracy and constitute one of the most important commitments and obligations of any country sharing as a member State the values and standards of the Council of Europe. The way the November elections were conducted clearly shows that there is a persistent failure by Azerbaijan to honour its commitments to the Council of Europe. This must be sanctioned.

9. In order to restore confidence in the electoral, and more generally the democratic process, Azerbaijan needs to ensure that the rerun in the 10 constituencies fully abides by democratic principles. To this effect, the following measures need to be taken urgently:

9.1. investigations into electoral fraud should be conducted in a totally impartial and professional way, without any political or administrative pressure;

9.2. the results of these investigations should be made public and justice should be administered in an equally impartial and professional way, without any political and administrative pressure;

9.3. the newly elected parliament should amend the electoral legislation in line with the recommendations of the Venice Commission, in particular with regard to the composition of the electoral commissions;

9.4. freedom of assembly should be fully guaranteed;

9.5. media pluralism in the electronic media and freedom of expression should also be fully guaranteed.

10. The Assembly concludes that the conduct of the November 2005 parliamentary elections in Azerbaijan falls within the provisions of Rule 8.2.b of the Assembly Rules of Procedure: "persistent failure to honour obligations and commitments".

11. The Assembly decides to ratify the credentials of the parliamentary delegation of Azerbaijan.

12. The Assembly decides to observe the re-run elections on 13 May 2006. It instructs its Monitoring Committee to submit to the Assembly at its June part-session a report on the progress made in all the areas mentioned in paragraph 9 of this Resolution. On the basis of this report, the Assembly will then examine whether to apply Rule 9 of the Rules of Procedure on the reconsideration of previously ratified credentials on substantial grounds.

II. Explanatory memorandum

1. Assembly action

1. At the opening of the first 2006 part-session of the Parliamentary Assembly on Monday 23 January 2006, the credentials of the Azeri delegation were challenged on substantial grounds under Rule 8 of its Rules of Procedures in connection with the parliamentary elections that took place on 6 November 2005. The Assembly referred the report to the Monitoring Committee for report and to Committee on Rules of Procedure and Immunities for opinion.

2. Since its accession to the Organisation in 2001, all previous ballots held in Azerbaijan failed to meet basic democratic standards. This is why already in June 2005, in its Resolution 1456 (2005) on the functioning of democratic institutions in Azerbaijan, the Assembly warned that the parliamentary elections to be held in November 2005 would be "a decisive test for the democratic credibility of the country".

3. The Assembly Bureau set up an *ad hoc* Committee to observe these elections, with Mr Platvoet (Netherlands, UEL) as a Chairman. A total of 50 members of the Assembly observed the parliamentary elections that took place on 6 November 2005.

4. At its meeting on 25 November 2005, the Bureau approved and declassified the report of the *ad hoc* Committee and "noted that the co-rapporteurs of the Monitoring Committee on Azerbaijan should visit the country as soon as possible and asked Mr Platvoet to accompany them in his capacity of Chairman of the *ad hoc* Committee". The rapporteurs visited the country on 2 December 2005 and reported back to the Bureau on 12 December 2005. At this meeting it was agreed that they should visit the country again before the partial re-run of the elections, which the Bureau decided to observe.

2. The parliamentary elections in Azerbaijan

5. The Assembly adopted Resolution 1456 (2005) as an expression of major concern that only a few months ahead of the elections, fundamental human rights such as freedom of assembly, freedom of expression and the right to a fair trial were not guaranteed. The Assembly was equally concerned about the persistent arbitrary detention of opposition leaders and activists, the lack of pluralism in the electronic media, the far from perfect electoral legislation and the insufficient reform of the democratic institutions of the country.

6. At the time and following the adoption of Resolution 1456 (2005), the authorities took a certain number of measures in order to improve the situation. After nearly three years of total ban opposition rallies were again allowed in June 2005 and several took place in the capital and in the regions. The Public Television started operating in time for the election campaign. The Election Law was amended in order to improve the transparency of the voting process, to stipulate the impartiality of election commissions and to detail the rights and duties of stakeholders. The state-funded and the public television allocated free air time for political parties and organised regular televised debates. The candidates' registration process was eased and a record number of candidates (around 2,000) were able to compete for the 125 seats in Parliament.

7. However, the opposition often reported serious hindrances by the executive authorities in the organisation of its rallies: in the capital Baku, most venues allowed for mass demonstrations were in the outskirts; people travelling to attend from the regions were stopped on the roads and sent back by the police; in some regions, the local authorities often refused to allow the holding of rallies and participants were intimidated. The Assembly's pre-electoral mission condemned "the disproportionate violence and brutality, bordering on outright cruelty by the police when dispersing unauthorised rallies". The Public Television was created in parallel with the state TV, rather than replacing it. The Bureau *ad hoc* Committee which observed the elections reported heavy bias in favour of the ruling party on both channels, although to a greater extent on the State TV. Important recommendations of the Venice Commission and ODIHR regarding electoral legislation, such as to ensure balanced composition in the election commissions were not followed.

8. A couple of timid attempts to initiate a dialogue between the ruling party and the opposition ended in a deadlock. The atmosphere remained extremely tense, with the opposition openly

displaying its "orange" colour in an attempt to imitate the Orange Revolution in Ukraine and with the authorities being over suspicious of possibly violent provocations. The pre-electoral campaign was also marked by interference of local authorities in the process, abuse of administrative resources by local officials and harassment and arbitrary detention of opposition candidates and their staff.

9. The President of Azerbaijan was certainly aware of the shortcomings and tried to boost the democratisation of the electoral process by issuing two decrees. The first one, of 11 May 2005 "on the improvement of Election Practices", recalled the basic principles of conduct of all election officials and stakeholders. The Assembly welcomed this decree in Resolution 1456; however, the Bureau *ad hoc* Committee on the observation of the elections estimated that the effect of this decree in the regions had been rather limited.

10. On 25 October 2005 the President issued a second last minute decree "on immediate measures in connection with the preparation and conduct of parliamentary elections", which identified certain mistakes and deficiencies in the election process: for instance, problems with the distribution of voter's cards which were meant to prevent multiple voting, or interference in the voting process by local executive authorities. The decree introduced a number of measures which had been strongly advocated by the Council of Europe: in the first place, the introduction of invisible ink to mark voters' fingers; the lifting of the ban on NGOs with more than 30% foreign funding to observe elections and the elaboration of guidelines on complaint procedures with Council of Europe expert assistance. Both decrees warned executive officials that they would face administrative and criminal sanctions in the case of serious irregularities.

11. The International Observation Mission² which observed the parliamentary elections in Azerbaijan on 6 November concluded that these elections did not meet a number of Council of Europe commitments and standards for democratic elections. It acknowledged the improvements in some respects during the pre-election period, but at the same time denounced the progressive deterioration of the voting process on Election Day when observers assessed voting negatively in 13 per cent of polling stations visited. There were attempts to influence voter choices, unauthorized persons interfering in, or directing, the process, as well as cases of ballot stuffing. Inking procedures, in particular the checking of voters' fingers for traces of ink, were not followed in 11 per cent of polling stations visited, with several polling stations not applying the procedure at all. Domestic observers and even members of polling station commissions were observed being expelled from polling stations.

12. The observers also assessed the counting as bad or very bad in 43% of all counts observed in particular as regards, tabulation of the votes. They witnessed interference with the process, tampering with final protocols and intimidation of observers and party representatives.

13. The *ad hoc* Committee concluded that the extent of the irregularities and violations during the tabulation and counting were such that it undermined faith in the accuracy of the preliminary results and consequently public confidence in the fairness of the election process.

14. The report of the *ad hoc* Committee stated that the credibility of the elections now depended on the complaints and appeals process and the manner in which the authorities and the Central Election Commission (CEC) would investigate and address the irregularities and violations reported.

15. The CEC received 536 complaints by the 9 November deadline. It invalidated the results in 423 polling stations but this only led to the annulment of overall results in 4 out of 125 constituencies. The Constitutional Court further annulled the results in another 6. Therefore, by virtue of a presidential decree, rerun elections will be held in a total of 10 constituencies on 13 May 2006. At the same time, the Court validated the results in the remaining 115 constituencies. The newly elected parliament held its inaugural meeting on 2 December and elected its new Speaker.

16. According to information provided by the authorities, certain high officials who interfered in the election process have been dismissed (in particular, heads of Executive Powers of Surakhani, Sabirabad and Zakatala regions) and all the cases linked to violation of the election law were submitted to the Prosecutor's Office for a detailed investigation. A total of 17 criminal cases are pending before the courts (out of a total of 351 complaints received by the Prosecutor's office).

² *ad hoc* Committee to observe the Parliamentary Elections in Azerbaijan of the Bureau of the Parliamentary Assembly of the Council of Europe, OSCE/ODIHR, OSCE Parliamentary Assembly, European Parliament and NATO Parliamentary Assembly.

17. Both the opposition and several NGOs blame the authorities for large-scale falsification of election results, of which they claim having clear proof. According to NGOs which observed the elections and collected substantiated evidence, in at least 13 constituencies candidates representing pro-government parties were declared winners after manipulation of the real results. At least two members of the former Azeri delegation to the Assembly were allegedly elected in such circumstances. Moreover, election results in five out of ten invalidated constituencies were allegedly cancelled because the authorities were unable to prevent, even by manipulation, the victory of the opposition candidates.

18. Seven members of the main opposition block Asadliq were elected. However, they have refused to take their seats in parliament and intend to boycott the re-run elections, claiming that they do not believe in the electoral process.

19. Several opposition rallies were organised in the aftermath of the elections. On 26 November, at the end of a public rally which was authorised by the authorities between 3 and 5 pm, the organisers suggested that it be transformed into a peaceful sit-in. The police intervened at about 5.10 pm to disperse the crowd. According to reports by the opposition and confirmed by independent observers, the use of force by the police towards peaceful participants, amongst them many women and children, was disproportionate and the means used (e.g. water cannons, truncheons) were excessive. The police reported that 29 arrests had been made and several people, including 4 women, had been taken to hospital. The press release of the OSCE Office in Baku quoted reports according to which over 400 demonstrators and several journalists had been injured.

20. However, the authorities denied the accusations of excessive force and put the blame on the organisers of the rally, who, in their opinion, had provoked them.

21. The opposition continues to report problems with freedom of assembly and the continuous refusal by the Baku city administration to allow more central venues for the opposition rallies.

3. Conclusions of the Committee with regard to the credentials of the Azeri delegation

22. Rule 8.2. of the Assembly Rules of procedure stipulates that the substantial grounds on which credentials may be challenged are:

- a. serious violation of the basic principles of the Council of Europe mentioned in Article 3 of, and the Preamble to³, the Statute; or
- b. persistent failure to honour obligations and commitments and lack of co-operation in the Assembly's monitoring procedure

23. Free and fair elections are at the basis of democracy and constitute one of the most important commitments and obligations of any country sharing as a member State the values and standards of the Council of Europe.

24. The latest parliamentary elections in Azerbaijan sadly follow the same line as all the previous ballots since the country's accession – they failed to meet Council of Europe standards. This clearly presents a situation falling under the provisions of rule 8.2.b. – "persistent failure to honour obligations and commitments", a situation that cannot be tolerated any further.

25. The argument of the authorities and of our Azeri parliamentary colleagues that despite the shortcomings these elections have been the most democratic in the recent history of the country cannot be accepted as an excuse. Neither can we agree with the justification of mass violations based on alleged cultural differences and on the fact that mentalities cannot be changed overnight. When Azerbaijan was applying to become a member of the Council of Europe, it was certainly confident that these "differences" would not prevent it from fulfilling one of its most basic obligations, to have political representatives elected in a free and democratic way. The Assembly cannot tolerate a situation where

³ Preamble to the Statute, third paragraph: "Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy".

the elected representatives of the Azeri people lack the democratic credentials of a substantial part of their own population and where, because of this, the entire democratic process is undermined.

26. This being said, the opposition also has a great part of responsibility. Its boycott of parliamentary sittings and of further ballots does nothing to help the development of this same democratic process. Azerbaijan badly needs to strengthen its democratic institutions and parliament is probably the most important institution in this respect; this is why the opposition has to be in it, rather than in the streets.

27. In addition to the general principles that apply to any Council of Europe member State, one additional consideration has to be taken into account in the Azeri case. The huge profits that will be generated through oil revenues can push the country into unknown and dangerous directions if they are not administered through an open and democratic process.

28. The rerun elections will not change substantially the overall political balance in the parliament. However, they are important as their organisation is really the last chance of the authorities to demonstrate not only political will but also political ability. This means in particular that:

- investigations into electoral fraud should be conducted in a totally impartial and professional way, without any political or administrative pressure;
- the results of these investigations should be made public and justice should be administered in an equally impartial and professional way, without any political and administrative pressure;
- the newly elected parliament should amend the electoral legislation in line with the recommendations of the Venice Commission, in particular with regard to the composition of the electoral commissions;
- freedom of assembly should be fully guaranteed;
- media pluralism in the electronic media and freedom of expression should also be fully guaranteed.

29. Under Rule 8.5. of the Assembly Rules of Procedure, reports to the Assembly or the Standing Committee under paragraphs 3 and 4 shall contain a draft resolution proposing in its operative part:

- a. ratification of the credentials,
- b. non-ratification of the credentials,
- c. ratification of the credentials together with depriving or suspending the exercise of some of the rights of participation or representation of members of the delegation concerned in the activities of the Assembly and its bodies.

30. In the light of the conclusions of paragraph 24 of the present report, your Rapporteur suggests that the credentials of the Azeri delegation should not be ratified (Rule 8.5.b.) until convincing and substantial progress is made on all of the aforementioned areas.

31. In order to achieve the objectives mentioned in paragraph 28 of the present report, cooperation between the Assembly and our Azeri colleagues is essential. This is why an alternative option and a sign of compromise could be that the credentials of the Azeri delegation be ratified, but that the delegation members are deprived of their voting rights (Rule 8.5.c.) until convincing and substantial progress is made on all of the aforementioned areas.

32. In both cases, the Assembly should return to the question after the re-run elections of 13 May; i.e. at the earliest during its June part-time session.

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

Reference to committee: Assembly's decision of 23 January 2006, Rule 8.2.b of the Rules of Procedure.

Draft resolution adopted by the committee on 24 January 2006 with 31 votes in favour, 3 votes against and 8 abstentions.

Members of the committee: Mr György **Frun**da (Chairperson), Mrs Hanne **Severinsen** (1st Vice-Chairperson), Mr Mikko **Elo** (2nd Vice-Chairperson), Mr Tigran **Torosyan** (3rd Vice-Chairperson), Mr Pedro **Agramunt**, Mr René André, Mr Birgir Ármannsson, Mr Giuseppe **Arzilli**, Mr Jaume Bartumeu Cassany, Mrs Mertixell Batet, Mrs Gülsün Bilgehan, Mrs Mimount **Bousakla**, Mr Luc **Van den Brande**, Mr Patrick Breen, Mrs Beáta **Brestensktá**, Mr Milos Budin, Mr Mevlüt **Çavuşoğlu**, Mr Doros **Christodoulides**, Ms Lise **Christoffersen**, Mr Boriss **Cilevičs**, Mr Georges Colombier, Mr Joseph Debono Grech, Mr Juris **Dobelis**, Mrs Josette Durrieu, Mr Mátyás **Eörsi**, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Stef **Goris**, Mr Andreas **Gross**, Mr Alfred Gusenbauer, Mr Michael **Hagberg**, Mr Michael **Hancock**, Mr Andres **Herkel**, Mr Elmir Jahić, Mr Erik Jurgens, Mr Evgeni Kirilov, Mr Konstantin **Kosachev**, Mrs Darja **Lavtižar-Bebler**, Mrs Sabine **Leutheusser-Schnarrenberger**, Mr Eduard **Lintner**, Mr Tony **Lloyd**, Mr Mikhail Margelov, Mr Bernard Marquet, Mr Frano **Matušić**, Mr Miloš **Melčák**, Mrs Nadezhda Mikhaila, Mr Neven Mimica, Mr Paschal Mooney, Mr João Bosco **Mota Amaral**, Mr Zsolt Németh, Mr İbrahim **Özal**, Mr Theodoros **Pangalos**, Mr Leo **Platvoet**, Ms Maria **Postoico**, Mr Christos **Pourgourides**, Mr Anatoliy **Rakhansky**, Mr Johannes Randegger, Mr Dario Rivolta, Mr Armen **Rustamyan**, Mrs Katrin **Saks**, Mr Rudy Salles, Mr Kimmo **Sasi**, Mr Adrian Severin, Mr Samad **Seyidov**, Mr Vitaliy **Shybko**, Mr Leonid **Slutsky**, Mr Michael Spindelegger, Mrs Elene **Tevdoradze**, Mr Egidijus **Vareikis**, Mr Miltiadis **Varvitsiotis**, Mr José **Vera Jardim**, Mrs Birutė **Vėsaitė**, Mr Oldřich Vojř, Mr David **Wilshire**, Mrs Renate **Wohlwend**, Mr Emanuelis **Zingeris**.

N.B. The names of those members who were present at the meeting are printed in bold.

Secretariat of the committee: Mrs Ravaud, Mrs Theophilova-Permaul, Mrs Odrats