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Mission for the assessment of the referendum on the draft modifications to the Constitution of Azerbaijan (26 September 2016)

Memorandum

by Mr Aleksandar Nikoloski ("The former Yugoslav Republic of Macedonia", EPP/CD), Chairperson of the ad hoc committee

1. Further to an invitation from the Speaker of the Parliament of Azerbaijan, the Bureau of the Assembly, at its meeting of 5 September 2016, constituted an ad hoc committee to conduct an assessment mission of the referendum on the draft modifications to the Constitution of Azerbaijan (26 September 2016), composed of one representative of each political group as well as the co-rapporteurs of the Monitoring Committee, and authorised the President to approve its composition and to appoint its Chairperson. Furthermore the Bureau decided to ask the opinion of the Venice Commission on the draft modifications to the Constitution, as the Azerbaijani authorities did not ask for such an opinion.
2. On 15 September 2016, the President of the Assembly approved the composition of the ad hoc Committee to assess the referendum (Appendix 1) and appointed Mr Aleksandar Nikoloski ("The former Yugoslav Republic of Macedonia", EPP/CD), as its Chairperson.
3. The ad hoc committee was present in Azerbaijan from 24 to 27 September 2016 to assess the referendum with a mandate to observe the polling day, as well as to assess the campaign for the referendum. All other relevant questions for this country being part of the monitoring dialogue between the Council of Europe and Azerbaijan, the ad hoc committee invites the authorities to continue their co-operation with the co-rapporteurs of the Monitoring Committee and to implement the conclusions and recommendations of the Parliamentary Assembly of the Council of Europe.
4. The ad hoc committee had meetings with the President of Azerbaijan, the Speaker of the Parliament, members of the delegation of Azerbaijan to the PACE, the Chairperson of the Central Election Committee (CEC), representatives of the opposition, of the civil society and the media as well as members of the diplomatic corps in Baku. The programme is set out in Appendix 2.
5. The ad hoc committee operated outside the usual framework of an International Election Observation Mission, as none of its usual partners (OSCE/ODIHR, OSCE Parliamentary Assembly, European Parliament), was present in the country. However, international observers from other institutions were present.
6. The draft submitted to the referendum modified 29 provisions from different parts of the Constitution. The reform was three-fold: first, it modified a number of human rights provisions of the Constitution. Second, the reform of the system of governance gave additional powers to the President, increased his term of office and introduced the figure of the Vice-President. Third, the reform in economic areas, mainly concerning the ownership of agricultural land, to provide a possibility for the country to develop in these economically challenging times.
7. The referendum was organised in accordance with the national legislation and the Constitution of Azerbaijan and is considered legal and legitimate.
8. There was campaigning on the referendum during which both sides – supporters and opponents – were able to present their opinion. The Central Electoral Committee printed the draft modifications with explanation of their substance and delivered to every family in Azerbaijan. Free space in the media was

offered to both sides, however they decided not to use it. There was also campaigning via social media. The opponents had three rallies on 11 September, 17 September and 18 September.

9. During the campaign Mr Natig Jafarli Executive Secretary of the Republican Alternative Movement (REAL) was detained, although he was later released. The ad hoc committee welcomed this decision as did the rest of the international community. After the rally on 17 September activists from the opposition were detained. In order to obtain accurate information, the Head of the ad hoc committee sent a request to the Azerbaijani authorities for official data on how many persons had been detained. In the answer from the authorities that was submitted after the press conference on 27 September, the Ministry of Justice said that 13 opposition activists had been detained, and that according to the decisions by Yasamal District Court of Baku city all of the activists had been released on 25 September. The delegation welcomes the fact that that all activists were released from detention and sees this as a positive development.

10. During the day of the referendum, the ad hoc committee split into 5 teams who observed the voting in Baku and its outskirts, as well as in Bine (including a polling station located in a prison), Sumgayit and Sabayil.

11. The voting process was transparent, well organised, efficient and peaceful throughout polling day, and that no serious violations were observed during the counting process.

12. One team noted some minor problems such as that some voters were not informed enough about the process. Some elderly people could not read Latin characters so they could not understand the draft modifications. In the prison of Bine, prisoners had been informed about the draft modifications only one week before the referendum day. Some violations were observed during the voting in two polling stations in Bine. However, these cases were not to the extent to influence the final result.

13. Following the referendum day, the ad hoc committee held a press conference and made a statement (see Appendix 3).

14. It noted that the result of the referendum, in favour of the adoption of the modifications to the Constitution, expressed the willingness of the people of Azerbaijan to take a step forward towards the safe, stable and sustainable development of their country and to target the establishment of a more efficient system of governance and the implementation of more meaningful reforms needed for the country to respond to the democratic and economic challenges it faces.

15. However, the ad hoc committee regretted that the Azerbaijani authorities did not ask the Venice Commission of the Council of Europe to give its opinion on the draft to the Constitution. It took note of the preliminary opinion of the Venice Commission regarding the reforms of the governance system, and calls the Azerbaijani authorities to cooperate with the Commission. While assessing positively most of the modifications in the human rights chapter of the Constitution, the Venice Commission was critical of the limitation clauses which may affect the freedom of speech, the freedom of assembly and the freedom of association.

16. The ad hoc committee expressed the hope that the Azerbaijani authorities will respect this opinion of the Venice Commission in all its aspects: the criticism on the balance of power and the role of the Parliament, the praise in the human rights chapter, as well as the reservations.

17. As did the Venice Commission, the ad hoc committee felt that it would have been useful if there had been a longer and broader open and public dialogue ahead of the September 26 referendum, and regretted the lack of a proper debate in Parliament, as requested by the international community.

18. The ad hoc committee calls on the authorities of Azerbaijan to make all efforts in order to improve electoral processes in the country.

APPENDIX 1

List of members of the ad hoc committee

Chairperson: Aleksandar NIKOLOSKI, “The former Yugoslav Republic of Macedonia” (EPP/CD)

Group of the European People’s Party (EPP/CD)

Aleksandar NIKOLOSKI, “The former Yugoslav Republic of Macedonia”

Alliance of Liberals and Democrats for Europe (ALDE)

Andrea RIGONI, Italy

Socialist Group (SOC)

Yanaki STOILOV, Bulgaria

Antonio GUTIÉRREZ, Spain

European Conservatives Group (EC)

Dominik TARCZYŃSKI, Poland

Rapporteurs AS/MON (*ex officio*)

Stefan SCHENNACH, Austria

Cezar Florin PREDA, Romania

Secretariat

Bogdan TORCĂTORIU, Administrative Officer, Election observation and Interparliamentary co-operation Division

Sevda GÜNDÜZ, Secretariat, Election observation and Interparliamentary co-operation Division

APPENDIX 2 - Programme

Saturday 24 September

Arrival of members

Sunday 25 September

8:00-8:30 Delegation meeting

9:30-10:30 Meeting with Mr Ilham Aliyev, President of Azerbaijan

11:15-12:00 Meeting with Mr Ogtay Asadov, President of the Milli Mejlis with the participation of members of the delegation and of the Secretary General of the Parliament

12:15-13:30 Meeting with members of the diplomatic corps in Baku

- Italy – H.E. Giampaolo Cutillo
- Spain – Mr Jose Luis Diez Juarez, Chargé d'affaires
- Austria – H.E. Mr Axel Wech
- Romania – H.E. Mr Dan Iancu
- France – H.E. Ms Aurélie Bouchez
- Germany – H.E. Mr Michael Kindsgrab
- Greece – H.E. Mr Dimitrios G. Tsoundas
- EU – H.E. Ms Malena Mard

13:30-14:30 *lunch break*

14:30-15:15 Meeting with Mr Mazahir Panahov, Chairman of the Central Electoral Commission

15:15-16:00 Meeting with representatives of the civil society

- Ms. Arzu Abdullayeva, Helsinki Citizens Assembly
- Mr Akif Gurbanov, Institute for Democratic Initiatives (IDI)
- Ms Saida Godjamanli, Bureau on Human Rights and Rule of Law
- Ms Novella Jafarova, Women's Rights Protection Committee
- Ms. Saadat Benanyarli, International Society for Human Rights
- Ms. Mehriban Rahimli, consultant for Black Sea Trust for Regional Cooperation of the German Marshall Fund
- Mr Maharram Zulfugarli, Association for Civil Society Development in Azerbaijan

16:00-16:45 Meeting with representatives of the media

- Mr Elchin Shikhli, Zerkalo newspaper
- Mr Mushvig Alasgarli, Press Council

17:00-18:00 Meeting with

- Mr Natic Jafarli, REAL Movement
- Mr Jamil Hasanli, President of the National Council
- Mr Ali Karimli, President of the Popular Front

18:00-18:30 Meeting with interpreters and drivers

Monday 26 September

Referendum Day

8:00 Opening of the polling station

19:00 Closing of the polling station

Tuesday 27 September

9:30-10:30 Meeting of the delegation (debriefing and preparation of a statement)

10:45-11:25 Press conference

Departure of members

APPENDIX 3

Statement of the PACE assessment mission for the Constitutional referendum in Azerbaijan

Strasbourg, 27.09.2016 - The Bureau of the Parliamentary Assembly of the Council of Europe (PACE), upon the invitation of the Azerbaijani authorities, decided to send an ad hoc committee to conduct an assessment mission of the 26 September Constitutional referendum in Azerbaijan.

According to Article 29 of the “Guidelines for election observation” (“Rules of procedure of the Assembly”), “the ad hoc committee will report its findings in the form of a memorandum by its Chairperson to the Bureau”. This statement concerns our initial findings for the 26 September referendum. The text of this statement was adopted by the members of the ad hoc committee.

We would like to congratulate the people of Azerbaijan on the peaceful polling day. We would like to underline that we have a mandate to observe the polling day, as well as to assess the campaign for the referendum, and we will focus only on these questions, all other relevant questions for this country being part of the monitoring dialogue between the Council of Europe and Azerbaijan, and we invite the authorities to continue their co-operation with the co-rapporteurs of the Monitoring Committee and to implement the conclusions and recommendations of the Parliamentary Assembly of the Council of Europe.

In this context the delegation:

- concludes that the referendum was organised in accordance with the national legislation and the Constitution of Azerbaijan and is considered legal and legitimate;
- notes that the voting process was transparent, well organised, efficient and peaceful throughout polling day, and that no serious violations were observed during the counting process, and that is why we respect the will of the Azerbaijani people;
- considers that the result of the referendum, in favour of adoption of the modifications to the Constitution, expresses the willingness of the people of Azerbaijan to take a step forward towards safe, stable and sustainable development of their country and to target the establishment of a more efficient system of governance and the implementation of more meaningful reforms needed for the country to respond to the democratic and economic challenges it faces;
- regrets that the Azerbaijani authorities did not ask the respected Venice Commission of the Council of Europe to give its opinion on the draft modifications to the Constitution;
- welcomes the decision of the PACE Bureau to ask the Venice Commission for its opinion and takes note of the preliminary opinion of the Venice Commission;
- invites the Azerbaijani authorities to respect the opinion of the Venice Commission concerning relevant laws during the further process of implementation of the modifications to the Constitution;
- hopes that the Azerbaijani authorities will respect the opinion of the Venice Commission in all its aspects – where there is criticism as regards the balance of power and the role of the Parliament, where there is praise in the human rights chapter, and also where there are reservations;
- notes that there was campaigning on the referendum during which both sides – supporters and opponents – were able to present their opinion;
- thinks it would have been more useful if there had been a longer and broader open and public dialogue ahead of the September 26 referendum on modifications to the Constitution, and regrets the lack of proper debate in Parliament, as the international community requested;
- beside polling issues, the mission notes with regret that several activists were detained on different charges during the campaign for the referendum, and observes that – while it is beyond our mandate to interfere in the independent judicial process – we welcome the decision of the Azerbaijani authorities to release some of these activists, and we hope the authorities will continue to follow this path;
- calls for further improvement of the electoral process.

Aleksandar Nikoloski ("the former Yugoslav Republic of Macedonia", EPP/CD), head of the delegation
Andrea Rigoni (Italy, ALDE)
Yanaki Stoilov (Bulgaria, SOC)
Dominik Tarczyński (Poland, EC)
Antonio Gutiérrez (Spain, SOC)
Stefan Schennach (Austria, SOC), co-rapporteur of the Monitoring Committee
Cezar Florin Preda (Romania, EPP/CD), co-rapporteur of the Monitoring Committee