

Doc. 10959
12 June 2006

Implementation of Resolution 1480 (2006) on the challenge of credentials of the parliamentary delegation of Azerbaijan

Report

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

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Summary

Following the challenging of the credentials of the Azerbaijani delegation at the opening of the January 2006 part-session in connection with the parliamentary elections of November 2005, the Assembly, in its Resolution 1480 (2006), decided to: (i) ratify the credentials of the parliamentary delegation of Azerbaijan; (ii) observe the partial re-run elections on 13 May 2006, and (iii) examine at its June 2006 part-session whether to reconsider the previously ratified credentials on substantial grounds by virtue of Rule 9 of the Rules of Procedure, on the basis of a report by its Monitoring Committee on the progress made in the five areas mentioned in paragraph 9 of its Resolution 1480 (2006), namely: investigations into electoral fraud; publication of their results and administration of justice in a professional and impartial manner; revision of the electoral legislation in line with Venice Commission's recommendations; respect for freedom of the assembly and media pluralism.

Having examined the developments which occurred in these five areas since January 2006, the present report concludes that, although progress was observed in the conduct of voting on 13 May 2006, most of the requirements mentioned in paragraph 9 of Resolution 1480 (2006) have not yet been met. Despite some recent indications of the authorities' will to further reform the relevant legislation and practice, strong political will is still needed to ensure that the next Presidential elections in 2008 will fully meet Council of Europe standards. The report sets out a series of measures that should be taken in order to achieve this purpose.

Considering that co-operation between the Council of Europe and Azerbaijan remains essential for the development of democracy, rule of law and respect for human rights in the country and must continue for the purpose of preparing the 2008 elections, it is proposed that the Assembly does not reconsider at this stage the credentials of the parliamentary delegation of Azerbaijan. The Monitoring Committee should continue to follow closely the developments in the country and report back to the Assembly at its Spring 2007 part-session on progress in the honouring of obligations and commitments by Azerbaijan, including those related to the electoral reform.

I. Draft resolution

1. At the opening of the first 2006 part-session of the Parliamentary Assembly, the unratified credentials of the Azerbaijani delegation were challenged on substantial grounds under Rule 8 of the Assembly's Rules of Procedure in connection with the parliamentary elections that took place on 6 November 2005. The latter, despite some improvements in the pre-electoral period, were seriously flawed and failed to meet a number of international standards for democratic elections.

2. In Resolution 1480 (2006), adopted on 25 January 2006, the Assembly concluded that the conduct of the November 2005 parliamentary elections in Azerbaijan indeed fell within the provisions of Rule 8.2.b of the Assembly's Rules of Procedure concerning "persistent failure to honour obligations and commitments". Since the results in 10 constituencies (out of 125) were invalidated and partial re-run elections were scheduled for 13 May 2006, the Assembly, in paragraph 9 of Resolution 1480 (2006), listed a series of measures which needed to be taken urgently by the Azerbaijani authorities in order to ensure that the re-run elections would fully abide by democratic principles, namely that:

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

2.2. 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;

2.3. 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;

2.4. freedom of assembly should be fully guaranteed;

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

3. The Assembly decided to:

3.1. ratify the credentials of the parliamentary delegation of Azerbaijan;

3.2. observe the re-run elections on 13 May 2006;

3.3. examine at its June 2006 part-session, on the basis of a report by its Committee on the Honouring of Obligations and Commitments by Member States on the progress made in the five areas mentioned in paragraph 9 of its Resolution 1480 (2006), whether to reconsider the previously ratified credentials on substantial grounds by virtue of Rule 9 of the Rules of Procedure.

4. The pre-electoral delegation of the Assembly that visited Azerbaijan from 27 to 28 April 2006 expressed concern over the lack of signs of progress in the areas mentioned in Resolution 1480 (2006). Some positive developments have occurred since and the Assembly observers of the partial re-run elections of 13 May have concluded that there was progress in the conduct of voting on election day, although control over, and interference with, the electoral process by third parties, including representatives of local executive power, as well as economic pressure, remained an issue of concern.

5. The Assembly observers also underlined that, although electoral fraud was officially recognised to have changed the outcome of the November 2005 elections in only 10 constituencies, the results of the latter in a significant number of other constituencies could also be questioned. Therefore, the assessment of the conduct of the re-run elections should be seen as an integral part of the overall assessment of the parliamentary elections in Azerbaijan.

6. At the same time, the fact that only 10 out of a total of 125 constituencies were at stake significantly limited the importance of the re-run elections in the domestic political life. It is therefore all the more regrettable that a number of frauds also occurred during the partial re-run elections, despite a number of technical improvements.

7. The Assembly regrets that, despite its calls to the contrary, some opposition parties decided to boycott the partial re-run elections, thus reducing the choice of the electorate on election day.
8. The partial opposition boycott, the low stakes in these elections, but also the lack of public confidence in the electoral process after the November 2005 elections are factors which can explain the low visibility of the electoral campaign and the little interest shown by the public and the media.
9. More specifically, with respect to the five areas mentioned in paragraph 9 of its Resolution 1480 (2006), the Assembly notes that:
 - 9.1. Investigations into electoral fraud have only resulted in a very limited number of prosecutions and in an even smaller number of convictions. However, the Assembly welcomes the fact that for the first time in the history of the country, electoral fraud and violations of the electoral code have to some extent been prosecuted and punished according to the law.
 - 9.2. The Prosecutor's Office and the Central Electoral Commission have published figures with respect to the appeals received and the results of investigations carried out into violations of the law in the course of the electoral process. The Assembly urges the Azerbaijani authorities to continue their efforts to give full disclosure to the public and the international community regarding the handling of appeals and the process of investigations, also with respect to the irregularities which have reportedly taken place in the course of the re-run elections.
 - 9.3. The electoral legislation has not been amended in line with the recommendations repeatedly made by the European Commission for Democracy through Law (Venice Commission). However, the Assembly welcomes the fact that the Azerbaijani authorities have now requested, albeit at a late stage, the assistance of the Venice Commission with the reform of the Election Code of Azerbaijan. The Assembly reiterates that such a reform is a crucial pre-requisite for elections in Azerbaijan to take place in accordance with Council of Europe standards and commitments. In particular, the Assembly urges the authorities of Azerbaijan to:
 - 9.3.1. amend the provisions regarding the composition of the electoral commissions at all levels so as to establish an election administration which enjoys the confidence of the electorate and of all electoral stakeholders;
 - 9.3.2. further develop the procedure for an efficient handling of election-related complaints and appeals with the assistance of the Venice Commission.
 - 9.4. There have been no incidents of violence and only few impediments to the exercise of the freedom of assembly have occurred in contrast to the November 2005 elections. However, due to the overall low-key electoral campaign and the partial boycott by the opposition, it cannot be concluded that the limitations on freedom of assembly were really put to the test:
 - 9.4.1. No amendments were introduced to the law on freedom of assembly, which thus continues to give disproportionate discretion to local executive authorities in accepting or not requests for holding rallies and deciding on their venues;
 - 9.4.2. The Assembly therefore urges the Azerbaijani authorities to amend without delay the law on freedom of assembly and welcomes the fact that in their request for assistance addressed to the Venice Commission reference is explicitly made to this law.
 - 9.5. No significant changes have been observed since the November 2005 elections in the field of media pluralism. Again, due to the low stakes in the re-run elections, limited coverage was given to the electoral campaign in the electronic media, while most electronic media continued to show bias in favour of the ruling party in their prime time news and current affairs programmes.
 - 9.5.1. The Assembly underlines the importance of ensuring respect for media related provisions of the election code during electoral campaigns, including the equitable news coverage of political parties and candidates, and calls on the competent authorities, in particular the Central Electoral Commission, to take prompt and effective action against violations;
 - 9.5.2. The Assembly is also extremely preoccupied with recent incidents of violence against journalists: on 6 March 2006, the Azadlig newspaper correspondent Fikret Huseynli was

kidnapped and beaten up and on 3 May the Russian-speaking Zerkalo newspaper sport correspondent Rustem Makayilli was also beaten up. Following a brutal assault on 18 May, the Deputy Chairman of the Popular Front party of Azerbaijan and editor of the Bizim Yol newspaper, Mr Bahaddin Haziyeu, is currently in intensive care in a Baku hospital. There has been no progress in the investigation into the murder of Elmar Huseynov, the editor in chief of the Monitor magazine who was gunned down in March 2005;

9.5.3. The Assembly recalls that a free press is one of the backbones of any functioning democracy. It is therefore of utmost importance that attacks on journalists be promptly and thoroughly investigated and the perpetrators brought to justice.

10. In light of the above, the Assembly concludes that most of the requirements mentioned in paragraph 9 of its Resolution 1480 (2006) have not yet been met. Despite some recent indications of the authorities' will to further reform the relevant legislation and practice, strong political will is still needed to ensure that the next Presidential elections in 2008 will fully meet Council of Europe standards.

11. The Assembly underlines that the necessary electoral reform should be carried out well in advance of the 2008 presidential election; not simply to satisfy a demand by the international community but most of all in order to restore the confidence of the people of Azerbaijan in the electoral and more generally democratic process in the country.

12. The Assembly considers that co-operation between the Council of Europe and Azerbaijan remains essential for the development of democracy, rule of law and respect for human rights in the country. It must continue for the purpose of preparing the 2008 elections, in order for the progress achieved so far to be consolidated. The Assembly thus decides not to reconsider, at this stage, the credentials of the parliamentary delegation of Azerbaijan. The Assembly instructs its Monitoring Committee to follow closely the developments in the country and report back to it at its Spring 2007 part-session on progress in the honouring of obligations and commitments by Azerbaijan, including those related to the electoral reform.

II. Explanatory memorandum by MM. Gross and Herkel, co-rapporteurs

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1. The background: Resolution 1480 (2006) "on the challenge of still unratified credentials of the parliamentary delegation of Azerbaijan on substantial grounds"

1. At the opening of the first 2006 part-session of the Parliamentary Assembly on Monday 23 January 2006, the unratified credentials of the Azerbaijani 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 matter 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" and expressed hope that the forthcoming parliamentary elections would be held in a democratic and transparent manner "so as to cast no doubt over the credentials of the new delegation¹."

3. An International Observation Mission,² including an *ad hoc* Committee of our Assembly's Bureau composed of 50 members of the Assembly and chaired by Mr Leo Platvoet (Netherlands, UEL), observed the parliamentary elections in Azerbaijan on 6 November 2005. The Mission 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% 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% 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.

4. 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.

5. 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.

6. In Resolution 1480 (2006) on the challenge of still unratified credentials of the parliamentary delegation of Azerbaijan on substantial grounds, adopted on 25 January 2006, the Assembly concluded that the conduct of the November 2005 parliamentary elections in Azerbaijan indeed fell within the provisions of Rule 8.2.b of the Assembly Rules of Procedure concerning "persistent failure to honour obligations and commitments".

7. The Assembly also noted that the results in 10 constituencies (out of 125) were invalidated³ – in 4 constituencies by the CEC and in another 6 by the Constitutional Court – and that, by virtue of a presidential decree, partial re-run elections were scheduled for 13 May 2006. The Assembly was aware that the rerun elections would not change substantially the overall political balance in the parliament. However, they were considered to be important as their organisation was really the last chance of the authorities to demonstrate not only political will but also political ability. Therefore, the Assembly, in paragraph 9 of its Resolution 1480 (2006), listed a series of measures which needed to be taken urgently by the Azerbaijani authorities in order to ensure that the re-run elections would fully abide by democratic principles, namely that:

¹ The co-rapporteurs note that in its Resolution 209 (2006) on the verification of new members' credentials and new appointment procedures, adopted on 30 May 2006, the Congress of Local and Regional Authorities of Europe requested the Azerbaijani authorities "to hold municipal elections before the end of 2006 in the 141 municipalities where the ballots of December 2004 were invalidated, failing which the Azerbaijan's delegation to the Congress shall be suspended as from 1 January 2007 pending the holding of such elections".

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.

³ The co-rapporteurs note that in 5 out of these 10 constituencies opposition candidates had won.

- i. Investigations into electoral fraud should be conducted in a totally impartial and professional way, without any political or administrative pressure;
- ii. 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;
- iii. 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;
- iv. freedom of assembly should be fully guaranteed;
- v. media pluralism in the electronic media and freedom of expression should also be fully guaranteed.

8. In the light of the conclusion that the conduct of the November 2005 parliamentary elections fell within the provisions of Rule 8.2.b of the Assembly Rules of Procedure ("persistent failure to honour obligations and commitments"), the Rapporteur of the Monitoring Committee on the challenge of still unratified credentials, Mr Tony Lloyd (United Kingdom, SOC), suggested that the credentials of the Azeri delegation should not be ratified (Rule 8.5.b.) until convincing and substantial progress is made in all of the aforementioned areas.

9. Since cooperation between the Assembly and its Azeri members was essential, the Rapporteur suggested that an alternative option and a sign of compromise could be that the credentials of the Azeri delegation be ratified, but that the delegation members would be deprived of their voting rights (Rule 8.5.c.) until convincing and substantial progress was made in all of the aforementioned areas. 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.

10. Following amendments to the preliminary draft resolution prepared by the Rapporteur, Mr Lloyd, and after a long and heated discussion, the Monitoring Committee did not follow its Rapporteur and proposed to the Assembly to ratify the credentials and not to suspend the voting rights of the parliamentary delegation of Azerbaijan.

11. However, since the Monitoring Committee was divided on this issue, some of its members, including the co-rapporteurs, tabled an amendment to the draft resolution proposing the alternative option initially suggested by the Rapporteur on the challenge of the credentials, Mr Lloyd, namely that the Assembly ratifies the credentials but suspends the voting rights of the Azerbaijani delegation in accordance with Rule 8.5.c. until convincing and substantial progress was made in all of the aforementioned areas. The majority rejected the amendment and thus the Assembly decided to:

- i. ratify the credentials of the parliamentary delegation of Azerbaijan;
- ii. observe the re-run elections on 13 May 2006,
- iii. and examine at its June 2006 part-session, on the basis of a report by its Committee on the Honouring of Obligations and Commitments by Member States on the progress made in the five areas mentioned in paragraph 9 of its Resolution 1480 (2006), whether to reconsider the previously ratified credentials on substantial grounds by virtue of Rule 9 of the Rules of Procedure.

12. The Assembly's decision has hence put particular emphasis to the partial re-run elections of 13 May 2006. The co-rapporteurs had already at the time of the January debate warned that the partial re-run elections would not be decisive since only 10 out of 125 constituencies were at stake. Even if in all these constituencies opposition candidates were to win this would not change at all the political balance in the parliament.

13. However, the majority of the Assembly was convinced by the argument of the Azerbaijani delegation according to which no sanctions should be applied since the parliamentary elections were not over and an overall assessment could only be made after the partial re-run elections.

2. The partial re-run elections of 13 May 2006

a. Observation by the *ad hoc* Committee of the Bureau

14. According to normal practice, a pre-electoral delegation of the Assembly visited Azerbaijan from 27 to 28 April 2006. It was composed of one representative from each Political Group in the Assembly, and consisted of Mr Leo Platvoet (Netherlands, UEL), Ms Ruth-Gaby Vermot-Mangold (Switzerland, SOC), Mr Eduard Lintner (Germany, EPP/CD), Mr Fiorello Provera (Italy, ALDE) and Mr Mevlüt Çavuşoğlu (Turkey, EDG).

15. In the statement issued by the pre-election delegation at the end of its visit, the delegation expressed concern about the lack of signs of democratic progress in the run-up to the partial re-run of the Parliamentary elections. The delegation in particular "could detect little proof of the existence of the political will to make progress in the areas demanded by the Assembly". However, it considered that "there [was] still enough time for the authorities to implement democratic reform and show, with the conduct of the upcoming election re-run, their commitment to the development of a democratic society in Azerbaijan".

16. A 20-member *ad hoc* Committee of the Bureau observed the partial re-run elections of 13 May and its report was declassified by the Bureau on 29 May 2006 (Doc. 10941). The *ad hoc* Committee concluded that there was progress in the conduct of voting on election day. The voting procedures were evaluated as bad in 18% and good or very good in 82% of the polling stations visited by the *ad hoc* Committee. These figures are similar to those for the November elections where the voting procedures were evaluated as bad in 13% and as good or very good in 87% of cases. However, the *ad hoc* Committee was not large enough to make a comprehensive assessment of the vote count and tabulation processes and thus recommended that the irregularities reported to it by other observer missions should be fully investigated. Control over, and interference in, the electoral process by third parties, including representatives of local executive powers and economic interests, remained for the *ad hoc* Committee a point of concern⁴.

17. The Limited Election Observation Mission (LEOM) established by the OSCE/ODIHR, which also observed the partial re-run elections without this time deploying additional short-term observers, found, for its part, that while the repeat election process reflected some improvements, such as an inclusive candidate registration, a largely unimpeded campaign, and increased opportunities for participation of domestic observers, there were several issues of concern. These issues included the composition of election commissions, instances of interference by local authorities in the election process, and the handling of complaints and appeals by election commissions and courts. Also the LEOM of the OSCE/ODIHR noted a number of irregularities in the conduct of the voting, counting and tabulation processes, while welcoming as a step towards increased transparency, the fact that the Central Election Commission posted result protocols by polling stations on its website on the morning after the election.

18. Both the pre-electoral and electoral delegation of the Assembly underlined that, although electoral fraud was officially recognised to have changed the outcome of the November 2005 elections in only 10 constituencies, the results of the latter in a significant number of other constituencies could also be questioned⁵. Therefore, the assessment of the conduct of the re-run elections should be seen as an integral part of the overall assessment of the parliamentary elections in Azerbaijan.

19. At the same time, the fact that only 10 out of a total of 125 constituencies were at stake makes it all the more regrettable that a number of frauds also occurred during the partial re-run elections, despite a number of technical improvements. A number of irregularities that occurred during the pre-electoral period and on election day, together with the observed improvements, are reported by the *ad hoc* Committee of the Assembly's Bureau in Doc. 10941. The co-rapporteurs report below under (b) additional information they received during their visit to Baku from 25 to 28 May 2006.

⁴ See the full text of the conclusions and recommendations of the *ad hoc* Committee as well as of the statement it issued after the elections in doc. 10941.

⁵ In this respect, it is regrettable that the Constitutional Court failed to explain the basis for its decision to cancel the results in six constituencies (in addition to the invalidation of the results in four constituencies by the Central Electoral Commission) and to ratify the results in others.

20. In its Resolution 1480 (2006), the Assembly denounced the attitude of the opposition and its intention to boycott the parliamentary sittings and the re-run elections as neither constructive nor conducive to the development of the democratic process underlying that the place of the opposition is in parliament and not on the streets. It therefore urged the opposition to reconsider its decisions.

21. Finally, the opposition was divided and only representatives of the Musavat party took their seats in parliament and participated in the re-run elections of 13 May⁶. The co-rapporteurs regret that, despite the Assembly's calls to the contrary, some opposition parties decided to boycott the partial re-run elections thus reducing the choice of the electorate on election day.

22. The partial opposition boycott, the low stakes in these elections, but also the lack of public confidence in the electoral process after the November 2005 elections can explain the low visibility of the electoral campaign and the little interest shown by the public and the media. Such a limited importance given to the re-run elections within the country contrasts with the decisive role that this re-run were to play for the country's relations with the Parliamentary Assembly of the Council of Europe in the light of Resolution 1480 (2006). This, as was said above, was no surprise to the co-rapporteurs.

b. Additional information provided to the co-rapporteurs during their fact-finding mission from 25 to 28 May 2006

23. As a general remark, the co-rapporteurs wish to stress that the oil revenues generated from the new BTC pipeline⁷, and the increasingly strategic importance of Azerbaijan for the United States seem to have led to what is often called in Baku an "official euphoria". Economic growth, however, cannot substitute the principles and values specified in the membership obligations and accession commitments of the country to the Council of Europe. The co-rapporteurs thus regret that, for the first time in the last three years during which they have paid a dozen of visits to the country, they were received by no Minister, nor the Head of the Executive Office of the President of the Republic or the Prosecutor General⁸.

24. With respect to the elections, the co-rapporteurs note as an issue of general concern the fact that many businessmen seem to have a growing interest in becoming members of parliament. This was also the case in the May re-run elections since a businessman was reportedly willing to invest more than one million dollars to obtain a seat in parliament.

25. Concerning the observation of the election process and the counting of the votes in the partial re-run elections of 13 May 2006, the co-rapporteurs received the following additional information:

i. In constituency No 31 national observers were prevented from approaching the table where the count was taking place and could not thus see what happened there; also in this constituency there have been clear indications of bussing of voters from one polling station to another and of bussing of voters from constituencies where no re-run elections were organised to polling stations in constituencies where such re-run was held; in a polling station of the same constituency 100 ballots were missing after the count.

ii. Some of the opposition candidates to the re-run elections as well as persons who had criticised the way the November elections were organised lost not only the elections, but reportedly, under the pressure of the authorities, also their positions, property and freedom. For this reason, many citizens who are able to do so seem to emigrate abroad.

iii. In four polling stations of constituency No 42 the Deputy Head of the Local Executive Authority met after the closing of the polling stations their chairpersons in order to instruct them how to manipulate the counting in the interest of the candidate of the majority party. These instructions are reportedly available on tape. From another polling station in the same constituency two candidates have two different protocols indicating different results of the vote. Finally, always in constituency

⁶ See for more details, Doc. 10941, para. 13.

⁷ GDP growth for 2005 is more than 25%, the highest rate in the world.

⁸ The co-rapporteurs have also for the first time been denied access to three prisoners they wanted to see. They will report in more details on this issue as well as on the meetings they did have with other prisoners in the Information Note on their last fact-finding mission which they will present to the Monitoring Committee at one of its next meetings.

No. 42, three opposition observers had been arrested without any justification for three hours on election day.

iv. In constituency No. 44 the candidate of the ruling party was able to put his slogan on the trucks which repaired the road in the district in clear violation of the electoral law.

26. In general, many of the interlocutors of the co-rapporteurs, including international observers, had the overall impression that the May 2006 re-run did not really differ from the November 2005 elections.

27. Also some critical intellectuals pointed out to the co-rapporteurs that many citizens felt that the way the parliamentary elections were organised did not produce a legitimate Parliament, fully independent from the President of the Republic and his Government. More and more citizens were reportedly unhappy with the people who were meant to represent them and many of them could not identify themselves with MPs who were not really representatives of the society.

28. The same critical intellectuals told the co-rapporteurs that the opposition also needed to renew itself in order to achieve support within the Azerbaijani society. Many people in Azerbaijan were losing hope that further democratic influence on the government was possible: they believe that the West shows little consistence with regard to the democratic values it is supposed to defend. This is one of the biggest disappointments for the young Azerbaijani people who thus risk to turn to radical Islam.

29. An interesting proposal in order to overcome the division of the country and to restore a Parliament which would really reflect the will of the people was presented to the co-rapporteurs by the opposition parties which are not represented in the Parliament. They suggest to increase the number of seats in Parliament from 125 to 200 and to modify the Constitution in order to reintroduce the proportional system for at least those 75 new MPs which would then be elected in by-elections in the next year. These opposition parties consider collecting 300.000 signatures to propose such a constitutional amendment in order to submit it to the President of the Republic and the Parliament. The latter should then decide whether such a proposal could be put to a referendum. Another proposal relates to the lowering of the number of MPs necessary to create a fraction in Parliament: currently the required number is 25 which is far too high as compared to the 125 seats.

3. Developments with respect to the five areas mentioned in paragraph 9 of Resolution 1480 (2006)

a. *Investigations into electoral frauds and publication of results*

30. The Prosecutor's Office and the Central Electoral Commission published in a joint press release on 6 April 2006 a list of "measures taken for the investigation and elimination of law infringements committed in the course of the parliamentary electoral process".

31. Within the period from 6 November 2005 to early March 2006, the Prosecutor's Office received 351 appeals (39 on polling day) regarding elections, including 99 from the Central Election Commission, 34 from constituency commissions, 4 from electoral blocs, 31 from law-enforcement agencies and 183 from citizens. The Prosecutor's Office initiated three criminal proceedings and one administrative procedure against candidates.

32. Institution of criminal proceedings on 105 appeals was dismissed due to the absence of *corpus delicti*. 179 appeals were forwarded to the relevant election commissions and law-enforcement agencies. On remaining appeals, the Prosecutor's Office instituted 18 criminal proceedings, six of which on bribing of voters, five on falsification of documents, three on hooliganism, one on the use of force against authorities, two on interference in the work of election commissions and attempt to exert influence upon it and one on abuse of power. Criminal proceedings on three of the abovementioned cases were discontinued and 2 of them suspended. The remaining 13 cases were brought before the courts.

33. According to information received by the co-rapporteurs during their recent fact-finding mission, as of end of May 2006, one case was still pending before the court while court judgments were issued in all other cases: in seven of them the defendants were sentenced to community labour; in four cases they were sentenced to pay a fine; in one case the defendant was sentenced to imprisonment, and in one case the sentence was suspended because the defendant was a woman.

34. The Prosecutor's Office received 19 additional appeals with respect to the re-run elections of 13 May and instituted criminal proceedings in two cases.

35. It can thus be concluded that investigations into electoral fraud have only resulted in a very limited number of prosecutions and in an even smaller number of convictions to minor sentences. That said, the fact that for the first time in the history of the country electoral fraud and violations of the electoral code have to some extent been prosecuted and punished according to the law is a welcome development.

36. In this respect, the co-rapporteurs note that it was publicly announced before the re-run elections that the two decrees issued by the President of Azerbaijan on 11 May and 25 October 2005 "on the improvement of Election Practices" and "on immediate measures in connection with the preparation and conduct of parliamentary elections", respectively, remained valid also for the re-run elections. It was thus re-iterated that executive officials would face administrative and criminal sanctions in the case of serious irregularities.

37. Therefore, the co-rapporteurs urge the Azerbaijani authorities to continue their efforts to give full disclosure to the public and the international community regarding the handling of appeals and the process of investigations also with respect to the irregularities which have reportedly taken place in the course of the re-run elections.

b. Reform of the electoral legislation

38. Despite the recommendation made in sub-paragraph 9.iii of Resolution 1480 (2006), the electoral legislation has not been amended in line with the recommendations repeatedly made by the European Commission for Democracy through Law (Venice Commission) jointly with OSCE/ODIHR.

39. At the Monitoring Committee's meeting on 8 March 2006, the parliamentary delegation of Azerbaijan told the Committee that it was technically not possible to amend the Election Code before the May re-run elections and that they would do so afterwards. However, when the Committee and subsequently the Assembly adopted Resolution 1480 (2006) in January 2006, the members of the delegation had not provided this information and had not objected to sub-paragraph 9.iii.

40. The co-rapporteurs reiterate that the reform of the Election Code is a crucial pre-requisite for elections in Azerbaijan to take place in accordance with Council of Europe standards and commitments. They recall that since September 2003 a number of important suggestions on how to improve the Election Code in order to provide the legal framework for elections conducted in line with international standards have been made by the Venice Commission and the OSCE/ODHIR in altogether six documents.

41. In the most recent joint document, namely the "Final Opinion on the Amendments to the Election Code of the Republic of Azerbaijan by the Venice Commission and OSCE/ODIHR", adopted by the Venice Commission on 21-22 October 2005, it is clearly stated that the "most important suggestions have not been implemented by the authorities of Azerbaijan in spite of the repeated recommendations from the Parliamentary Assembly and the Committee of Ministers of the Council of Europe"⁹.

42. The Venice Commission and the OSCE/ODIHR concluded that along with most technical changes, only a limited number of substantial amendments had been adopted in response to the 2003 and 2004 joint recommendations and their 2005 Interim Opinion. Since the remaining recommendations of 2003, 2004 and 2005 have not been duly taken into consideration, the amendments to the Election Code adopted by the Parliament of Azerbaijan in June 2005, "are only partially in line with OSCE commitments and Council of Europe standards for democratic elections and [are] insufficient to develop the necessary public confidence in the electoral legislation and practice in Azerbaijan"¹⁰.

⁹ See doc. CDL-AD(2005)029, para. 6.

¹⁰ Ibid., para. 60. See also the Final Report of the OSCE/ODIHR Election Observation Mission on the parliamentary elections of 6 November in the Republic of Azerbaijan, doc. ODIHR.GAL/7/06 of 2 February 2006.

43. It is therefore to be welcomed that the Azerbaijani authorities have now requested, albeit at a late stage, the assistance of the Venice Commission with the reform of the Election Code of Azerbaijan. More specifically, the request for "technical assistance" was addressed to the Secretary of the Venice Commission by the Head of the Executive Office of the President of the Republic of Azerbaijan on 5 May 2006, that is only one week before the re-run elections. The Venice Commission is asked to help the Azerbaijani authorities to implement the recommendations provided in the OSCE/ODIHR Final Report on the parliamentary elections of 6 November 2005 and the proposals made in the Venice Commission and OSCE/ODIHR Final Opinion of 21-22 October 2005 with respect to the legislation on elections and on assembly, as well as to elaborate the relevant draft law.

44. The co-rapporteurs draw particular attention to two issues which should be addressed as part of the reform of the Election Code: (a) the provisions regarding the composition of the electoral commissions at all levels which should be amended so as to establish an election administration which enjoys the confidence of the electorate and of all electoral stakeholders; (b) the procedure for an efficient handling of election-related complaints and appeals which should be further developed with the assistance of the Venice Commission. The co-rapporteurs are also concerned with the practice to deregister candidates by virtue of Article 88 § 4 of the Election Code on the basis of doubtful testimonies and without proper hearing.

c. Freedom of assembly and of the media

45. The restriction on freedom of assembly, an unalienable human right in a democracy, was an issue of great concern during the November 2005 elections. The latter were indeed marked by serious impediments to the right to peaceful assembly and disproportionate use of force by the police in dispersing unauthorised rallies, and this despite the President's Decree of 11 May 2005 instructing the local executive authorities "to take the necessary measures to ensure freedom of assembly".

46. In this respect, the co-rapporteurs were concerned during their recent fact-finding mission to Baku with the statement made by the Deputy Minister of the Interior according to whom, despite the reports by international observers about the disproportionate use of force by the police during the manifestations of 26 November 2005, the police had acted in a totally professional manner and its overall conduct was exemplary. For him, for all the confrontations and wounding the blame had to be put on the demonstrators. That said, he also informed the co-rapporteurs that, following these events, 12 police officers were reprimanded and some were dismissed. Criminal proceedings were, however, discontinued.

47. In contrast to the November 2005 elections, during the partial-run elections of 13 May 2006, there have been no incidents of violence and only few impediments to the exercise of the freedom of assembly have occurred. However, due to the overall low-key electoral campaign and the partial boycott by the opposition, it cannot be concluded that the limitations on freedom of assembly were really put to the test.

48. As regards incidents of impediment to the exercise of the freedom of assembly during the re-run elections, the co-rapporteurs received the following allegations: (a) the UMID party was refused an authorisation to hold a rally by the Baku City Council on 6 and on 12 May 2006; (b) police officers in some regions prevented voters to attend meetings of the opposition leaders or did not allow the latter to meet with their voters; (c) local executive authorities occasionally intervened to prevent the opposition parties to hold public meetings.

49. As regards the relevant legislation, no amendments were introduced to the law on freedom of assembly which thus continues to give disproportionate discretion to local executive authorities in accepting or not requests for holding rallies and deciding on their venues.

50. Therefore, the co-rapporteurs urge the Azerbaijani authorities to amend without delay the law on freedom of the assembly and welcome the fact that in their request for assistance addressed to the Venice Commission reference is explicitly made to this law.

51. No significant changes have been observed since the November 2005 elections in the field of media pluralism. Again, due to the low stakes in the re-run elections, limited coverage was given to the electoral campaign in the electronic media, while most electronic media continued to show bias in favour of the ruling party in their prime time news and current affairs programmes.

52. Many interlocutors of the co-rapporteurs during their recent mission stressed that even the weekly TV reports from the parliament never mention the views of the opposition MPs. For most of the TV channels no kind of opposition seems to exist.

53. The co-rapporteurs underline the importance of ensuring respect for media related provisions of the Election Code during electoral campaigns, including the equitable news coverage of political parties and candidates, and calls on the competent authorities, in particular the Central Electoral Commission, to take prompt and effective action against violations.

54. The co-rapporteurs are also extremely preoccupied with recent incidents of violence against journalists. In particular, on 6 March 2006, the Azadlig newspaper correspondent Fikret Huseynli was kidnapped and beaten up. On 3 May the Russian-speaking Zerkalo newspaper sport correspondent Rustem Makayilli was also beaten up. Following a brutal assault on 18 May, the Deputy Chairman of the Popular Front party of Azerbaijan and editor of the Bizim Yol newspaper, Mr Bahaddin Haziyeu, is currently in intensive care in a Baku hospital. The co-rapporteurs met Mr Haziyeu in hospital on 28 May and were shocked of his physical condition.

55. The co-rapporteurs also regret that there has been no progress in the investigation into the murder of Elmar Huseynov, the editor in chief of the Monitor magazine who was gunned down in March 2005.

56. The co-rapporteurs recall that a free press is one of the backbones of any functioning democracy. It is therefore of utmost importance that attacks on journalists be promptly and thoroughly investigated and the perpetrators brought to justice.

4. Conclusions

57. In light of the above, the co-rapporteurs conclude that most of the requirements mentioned in paragraph 9 of the Assembly Resolution 1480 (2006) have not yet been met. Despite some recent indications of the authorities' will to further reform the relevant legislation and practice, strong political will is still needed to ensure that the next Presidential elections in 2008 will fully meet Council of Europe standards.

58. The co-rapporteurs underline that the necessary electoral reform should be carried out well in advance of the 2008 presidential elections not simply to satisfy a demand by the international community but most of all in order to restore the confidence of the people of Azerbaijan in the electoral and more generally democratic process in the country.

59. They consider that co-operation between the Council of Europe and Azerbaijan remains essential for the development of democracy, rule of law and respect for human rights in the country. It must continue for the purpose of preparing the 2008 elections in order for the progress achieved so far to be consolidated.

60. The co-rapporteurs thus propose not to reconsider at this stage the credentials of the parliamentary delegation of Azerbaijan. They will continue to follow closely the developments in the country and prepare a fully-fledged report on the honouring of obligations and commitments by Azerbaijan, including those related to the electoral reform, with a view to an Assembly debate at its Spring 2007 part-session.

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

Reference to committee: Resolution 1480 (2006)

Draft Resolution adopted by the committee with one abstention on 6 June 2006

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 Aydin **Abbasov**, 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**, Mrs Herta **Däubler-Gmelin**, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette Durrieu, Mr Mátyás Eörsi, Mr Per-Kristian Foss, Mrs Urszula Gacek, 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, Ms Gultakin Hajiyeva, 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 Mikhailova, 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 Vėšaitė, 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 Chatzivassiliou, Mrs Theophilova-Permaul, Mrs Odrats