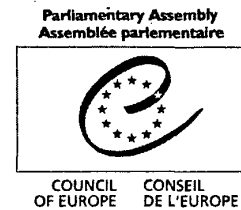


# Parliamentary Assembly Assemblée parlementaire



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## Functioning of democratic institutions in Azerbaijan

### Report

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

Co-rapporteurs: Andreas Gross, Switzerland, Socialist Group and Mr Andres Herkel, Estonia, Group of the European People's Party

### Summary

The parliamentary elections that will be held in Azerbaijan in November 2005 will be a decisive test for the democratic credibility of the country. All previous ballots held since Azerbaijan's accession to the Council of Europe in 2001 have failed to meet basic democratic standards.

Since the 2003 presidential elections, marred by fraud and violence, the stability in the country has been maintained at the expense of respect for fundamental human rights such as freedom of assembly, freedom of expression and the right to a fair trial. In the present political climate, neither the electoral system nor key state institutions and the judiciary might be able to provide sufficient guarantees for fair elections. Furthermore, the important revenues that will be generated through the operation of the Baku-Tbilisi-Ceyhan pipeline might create temptations for some officials and politicians to bypass democracy.

The report calls on the Azerbaijani authorities and opposition to recognise the importance of the forthcoming elections for the democratic future of the country and publicly and officially to commit themselves to non-violence and respect for basic human rights. It urges the authorities to pursue in practice some positive recent steps such as the Presidential decree on the guarantees for democratic elections, the creation of public service broadcasting and the first modest attempts at political dialogue between the ruling parties and the opposition.

## I. Draft resolution

1. In November 2005, Azerbaijan will hold parliamentary elections. The Parliamentary Assembly considers them to be a decisive test for the democratic credibility of the country. It recalls that all previous ballots held since Azerbaijan's accession to the Council of Europe in 2001 failed to meet basic democratic standards. The Assembly refers in this respect to its Resolutions 1358 (2004) and 1398 (2004).
2. The Assembly welcomes the Presidential decree of 11 May 2005 calling on the authorities to ensure that the parliamentary elections will be held in accordance with the Electoral Code of the Azerbaijani Republic and allowing exit polls by independent organisations. It takes note of the assertion that the violations that have occurred in the past were only due to the incompetence and lack of responsibility of some officials and cannot be attributed to the Azerbaijani leadership.
3. However, the decree only reiterates principles that are already enshrined in the relevant Azerbaijani legislation. It is therefore their implementation that will determine to what extent the November elections will be qualified as free and fair.
4. Since the 2003 presidential elections, marred by fraud and violence, the stability in the country has been maintained at the expense of respect for fundamental human rights such as freedom of assembly, freedom of expression and the right to a fair trial. No opposition rallies have been allowed and the electronic media have been under tight government control. The arbitrary arrests of opposition supporters continue. Although the seven political leaders imprisoned following the October 2003 events were pardoned by the President on 20 March 2005, they remain deprived of their civil rights after the Supreme Court upheld their convictions.
5. It is totally inadmissible that permissions for rallies are refused under the pretext of maintaining law and order and with the presumption that any rally would be at the origin of violence. There is a clear lack of understanding of the role and responsibility of police during mass events. A stable democracy can only be achieved through free and open political debate in the public sphere which is clearly lacking for the moment in Azerbaijan.
6. The recent, albeit modest, attempts at a political dialogue between the ruling parties and the opposition therefore deserve strong encouragement.
7. The Assembly welcomes the decision to transform the second State television channel (AzTV2) into a public service broadcasting, takes note of the first steps taken with the confirmation of a Board by Parliament and the subsequent election of its Director and expects it to start operating nationwide as soon as possible. It regrets that the first state television channel (AzTV1) will only be partially privatised and that the controlling package of shares remains in State hands. In Azerbaijan, television is the main means of information for the majority of the population. With political pluralism on the airwaves being relegated to the future and total control of content by the authorities remaining at present, prospects that it would fulfil its function of allowing voters to make well-informed decisions are dim.
8. The Assembly strongly condemns the murder of Elmar Huseynov, editor of the weekly magazine Monitor and the climate of fear that this murder has spread across the opposition press. It deplores the legal and administrative harassment to which opposition newspapers continue to be subjected and the difficulties in setting up and operating independent and critical television channels.
9. The Assembly is concerned that in the present political climate, the electoral code and other relevant legislation may not provide sufficient guarantees for fair elections. It regrets the delay in the discussions between the Azerbaijani authorities and the European Commission for Democracy through Law (Venice Commission) on the one hand and the Office for Democratic Institutions and Human Rights (ODIHR) on the other hand, regarding amendments to the electoral code and the fact that some of the most politically important recommendations such as those regarding the composition of the electoral commissions have not been taken into account. Legal provisions concerning NGOs and venues for rallies also need to be improved.

10. The Assembly also doubts whether key State institutions have been sufficiently reformed so as to perform their functions in full compliance with democratic standards in the election process. Those include the Ministry of the Interior, where recent revelations about the criminal activities of a senior official only led to mild sanctions, the Supreme and Appeals Courts whose chairpersons were recently dismissed and the local administrations where the President has been ordering major reshuffles and has been criticising them for their performance.

11. Furthermore, the Assembly notes that Azerbaijan still has the lowest number of lawyers per inhabitant in the world and that serious irregularities have marred the recent constitutive assembly of the Bar Association. This raises serious questions with regard to the full exercise of the rights of the defence which must be afforded to any person accused of a criminal offence, including in cases brought during and after the elections.

12. The inauguration of the Baku-Tbilisi-Ceyhan pipeline on 25 May 2005 offers prospects for an intensive economic and social development in Azerbaijan. However, the important revenues that will be generated through its operation might create temptations for some officials and politicians to bypass democracy, especially when the new parliament is elected. The Assembly therefore insists on the assurances given by the President that stable economic and social development of the country is impossible unless democratic institutions are formed on the basis of free and fair elections.

13. The Assembly therefore calls on the Azerbaijani authorities and opposition to recognise the importance of the forthcoming elections for the democratic future of the country and publicly and officially to commit themselves to non-violence and respect for basic human rights.

14. The Assembly calls on the Azerbaijani authorities to:

- i. ensure immediately full respect of freedom of assembly and freedom of expression;
- ii. more specifically, with regard to freedom of assembly, urgently comply with European standards and practice as regards the organisation of rallies and maintenance of law and order by the police and stop the practice of arbitrary arrests of opposition supporters based on the presumption that they are potential trouble-makers;
- iii. with regard to pluralism of the media, speed up the starting of operation of the Public Television, endow it with appropriate resources and means of operation and abstain from any direct and indirect interference with its functioning and content, speed up the privatisation of AzTV 1 and ensure a transparent and fair procedure, make provisions for eventual full privatisation and, meanwhile, give it a public service remit ensuring balanced unbiased news coverage and guaranteeing media access of the opposition;
- iv. with regard to freedom of expression, guarantee the free functioning of independent and opposition media and stop the practice of legal and administrative harassment and shed full light upon the murder of Elmar Huseynov;
- v. with regard to the electoral code and other related legislation, amend it in full compliance with the joint Venice Commission/ODIHR recommendations, namely with regard to the composition of the electoral bodies, lower the amount of the registration fee per candidate, allow foreign-funded NGOs as observers and allow the holding of rallies;
- vi. pursue political dialogue with all opposition parties before, during and after the elections.

15. The Assembly further invites the authorities of Azerbaijan to:

- i. speed up the reform of the judiciary and in particular, ensure that the qualification exams for new judges are held according to the planned timetable and in accordance with the law, revise the selection procedure for members of the Bar association and ensure that future exams are held in full compliance with European standards;
- ii. with regard to the right to a fair trial, fully comply with Resolution ... (2005) on the follow-up to Resolution 1359 (2004) on political prisoners in Azerbaijan;

iii. with regard to economic and social development, engage in a public debate, including all the main parliamentary and extra-parliamentary political forces, about the most important economic and social issues related to the distribution of the future oil revenues to the benefit of all the population, including the numerous refugees and internally displaced persons and pursue efforts to combat corruption and comply with international commitments in this respect.

16. The Assembly deeply appreciates the open and franc dialogue with the Azerbaijani parliamentary delegation and believes that this constructive co-operation will be essential in the run-up to the elections.

17. However, the Assembly will be unable to ratify the credentials of a new delegation in January 2006 if it was to represent a parliament resulting from an election which has not been considered free and fair by the international community.

18. The Assembly therefore resolves to:

i. observe the November 2005 parliamentary elections in close co-operation with the OSCE Parliamentary Assembly and the European Parliament and send an important number of observers;

ii. provide all parliamentary assistance that joint discussions with the Azerbaijani delegation identify as essential, such as training seminars for parliamentarians on the functions of a democratic parliament, the role of the opposition and the rules of procedure of parliament and organise exchanges of views with the participation of the political groups represented in the Assembly in order to share their experience of political dialogue in a democratic society with Azerbaijani parliamentarians and leading extra-parliamentary opposition members;

iii. co-ordinate its action in this field with the OSCE and the European Union.

## II. Explanatory memorandum by Mr Gross and Mr Herkel

### 1. Introduction

1. At least two important events will happen in Azerbaijan this year.
2. At the beginning of November, the country will hold its second parliamentary elections since joining the Council of Europe. These elections represent a major test for the state of democracy in the country, especially as none of the previous elections – neither the parliamentary elections in 2000-2001, nor the presidential elections in 2003, nor the municipal elections in December 2004 – were considered by international observers as complying with democratic standards.
3. At the end of May, the Baku-Tbilisi-Ceyhan (BTC) pipeline, a 2.9 billion USD investment able to transport up to one million barrels of crude oil daily from the Caspian sea to the world markets, will be officially inaugurated and will soon start pumping colossal amounts of money into the country. How this new wealth will be used and whether it will be distributed to the benefit of the entire population remains to be seen. The direct incidence on the elections is that the stakes with regard to power and money are very high and so are the chances of them being defended at any price, especially in an environment of widespread and massive-scale corruption.
4. Since the 2003 presidential elections, which were marred by massive fraud and violence, Ilham Aliyev, the son of the defunct president Heidar Aliyev, and his entourage have managed to uphold stability in the country. The economy is booming, the GDP growth is one of the highest in the world. However, the economy is too much oil-dependent and 42% of the population still lives below the poverty level.
5. Even more worrying, this stability has been achieved at the expense of some basic human rights which Azerbaijan has committed itself to respect by ratifying the European Convention on Human Rights: freedom of expression, the right to peaceful assembly and the right to a fair trial.
6. On 11 May 2005 the President of Azerbaijan issued a decree which called on the competent authorities to ensure that the parliamentary elections would be held in accordance with the Electoral Code of the Azerbaijani Republic. Amongst the key points were: prosecution of any illegal intervention in the electoral process; prohibition of persecution of citizens for their political beliefs; guaranteeing freedom of assembly, ensuring accurate voters' lists and equal opportunities for all candidates with regard to access to the media; allowing exit polls. The decree also asserted that the legal violations found during previous elections were due to the incompetence and lack of responsibility of some officials and members of election commissions and to a "post-Soviet" mentality; in no way were they related to a lack of political will of the Azerbaijani leadership.
7. While the public commitment to the holding of free and fair elections can only be welcomed, it has to be noted that the decree simply reiterates principles that are already enshrined in the relevant legislation. It is therefore their implementation that will determine to what extent the elections can be qualified as democratic. And the reality for the moment is rather disturbing.
8. Practically no opposition rallies have been allowed since October 2003. Until recently, seven opposition leaders were in jail following the October 2003 events. They were eventually released through a Presidential pardon decree on 20 March 2005, to a great extent thanks to the efforts of the Parliamentary Assembly and the international community as a whole. Nevertheless, the Supreme Court upheld their sentences, despite the fact that an OSCE report which had monitored their trials had concluded that there had been serious irregularities<sup>1</sup>. Hence, under the current legislation, they cannot participate in political activities.
9. The pre-election atmosphere is tense. Everybody has the recent events in Georgia, Ukraine and Kyrgyzstan in mind and the word "revolution" is subject to intense speculation on both sides. There seems to be little understanding that any election in which the ruling party does not have a landslide victory is a normal democratic practice; that election victory is not a fortress that has to be taken by storm.

<sup>1</sup> Report from the trial monitoring project in Azerbaijan 2003-2004, ODIHR and OSCE office in Baku.

10. Freedom of expression has also been curtailed. One of the most critical journalists, the editor-in-chief of the Monitor magazine, Elmar Huseynov, was murdered on 2 March. The investigation is progressing slowly, but the results so far are considered unconvincing by the people closest to the journalist. The opposition newspapers are weak, with low circulation and are frequently harassed by the authorities. The model of a big influential and, most importantly, unbiased daily broadsheet is totally unknown to the country.

11. Concerning television, which is by far the most influential medium, the authorities deserve congratulation for finally taking the step of at least formally creating a public service broadcasting and deciding to privatise the State TV. Every encouragement and expert assistance will be needed in order to guarantee that both TVs start operating under their new remit as soon as possible and in the best possible conditions (the concept of public broadcasting is equally unfamiliar to a country where the airwaves have always been controlled by the state). For the moment, however, everything is as before when one switches the TV set on. The commercial channels are also generally loyal. Only one dissenting voice has appeared in recent months, that of ANSTV.

12. Having these elements in mind, we decided to concentrate our last visit to Azerbaijan from 17 to 20 April 2005 on pre-election issues. We would like to express our deep gratitude to the Azeri parliamentary delegation, headed by Mr Seyidov and to the Milli Mejlis secretariat who, as always, were extremely helpful and efficient during the visit. We extend our warm thanks also to Mats Lindberg, Special Representative of the Secretary General of the Council of Europe and to Ilgar Ibrahimli, acting Director of the Council of Europe Information Office in Baku.

13. The bare facts, as they stood, were for us unacceptable for a democracy in general and even more worrying from the perspective of parliamentary elections to be held in less than six months. We were anxious to find out how much determination there was amongst the state institutions and main political forces to change things for the better.

14. We have to say with regret that many of our interlocutors left us, to put it mildly, disappointed and unconvinced. This is why we decided to present this report and we sincerely hope that our Azeri friends will accept it as an expression of our deep concern, as a sort of alarm bell. Everything that needs to be done must be put in place now, before the start of the official election campaign at the beginning of July, in order to guarantee that the November 2005 parliamentary elections are a democratic success.

## **2. Elections**

15. One of the most important commitments in the field of domestic legislation that Azerbaijan undertook upon accession was *"to revise its legislation on elections, particularly the Law on the Central Electoral Commission and the Electoral Law, taking account of the recommendation put forward by the international observers during previous elections, so that the next general elections in autumn 2000 can confirm definitively the progress made and their results can be accepted by the majority of the political parties that will participate in the elections, and can be considered as free and fair by international observers"* (Opinion No. 222 (2000)).

### **2.1. All the ballots held since accession have generally failed to meet basic democratic standards**

16. The 5 November 2000 elections to the Milli Mejlis (Parliament), according to the International Election Observation Mission (IEOM) indeed took place within an "improved legislative framework". However, the serious deficiencies in its implementation led the IEOM to conclude that the elections had fallen short of international standards, despite some improvements, in particular in enhancing political pluralism. The conclusion regarding the 7 January 2001 repeat parliamentary elections in Azerbaijan was hardly more positive. The authorities had tried to address the most significant shortcomings of the 5 November ballot by cancelling the results in 11 constituencies, dismissing officials and deciding to hold repeat elections. But these measures were not deemed sufficient to restore full confidence in the electoral process. Several opposition parties boycotted the elections.

17. One of the most serious concerns raised by international observers was the lack of independence of local election commissions, which had been subject to interference, pressure and intimidation from the local authorities.

18. Numerous dysfunctions and procedural irregularities were observed also during the referendum on amending the constitution of 24 August 2002. The referendum shifted more power towards the President (such as the adoption of a purely majoritarian election system and the election of the President by absolute majority, instead of a qualified two thirds majority). The Venice Commission had not been officially consulted on the text and the organisation of the referendum and its earlier calls to introduce an effective parliamentary control over the activities of the executive were ignored.

19. In Resolution 1305 (2002) on honouring of obligations and commitments by Azerbaijan, the Assembly insisted that in the ongoing revision of the Electoral Code, all the recommendations of the Council of Europe experts should be scrupulously taken into consideration. This concerned in particular the provisions regulating the composition of the electoral commissions, the participation of local observers, the adjudication of electoral complaints, the registration of candidates, the accuracy of voters' lists, the training of the members of elections commissions and the transparency of the entire election process. The Assembly also urged the Azerbaijani authorities to ensure that the law in question guarantees equal access of all political parties to the electoral process and insisted that the forthcoming presidential elections be held – on the basis of the newly reformed Electoral Code – fully in respect of international standards.

20. Exactly the opposite happened. The presidential election of 15 October 2003 again failed to meet generally accepted international standards. The electoral process was not transparent; falsification of election results cast doubt on the credibility of the scale of Ilham Aliyev's victory; authoritarian practices like intimidation of voters, pressure on election commissioners or clear bias of the media in favour of the ruling party's candidate were commonplace. But the worst was still to come. Violence erupted on the day after the election. The excessive use of force by the Azerbaijani security forces resulted in the death of at least one protester and the injuring of hundreds of others.

21. The events of 16 and 17 October were accompanied and followed by waves of arbitrary arrests of opposition supporters and election officials and observers, as well as politically motivated dismissals. More than 100 people associated with the opposition, including a former prime minister of Azerbaijan, a member of the Azerbaijani Parliament, the leaders of several opposition parties, the editor of Azerbaijan's main opposition newspaper, and a number of civil society leaders were detained and held in inhuman conditions. According to widespread and credible reports, many of them were subjected to torture, severe beatings and threats. The Assembly took note of reports that numerous opposition leaders were tortured and abused at the Organised Crime Unit of the Ministry of the Interior.

22. The Assembly therefore, in its Resolution 1358 (2004) on the functioning of democratic institutions in Azerbaijan asked the authorities to officially acknowledge the serious irregularities that occurred during the 2003 election process, to investigate the shortcomings of the electoral system and the human rights violations that took place during and after the elections and to bring to justice election officials responsible for election frauds and the law-enforcement officers involved in torture, inhuman treatment, threats and intimidation.

23. Very little, if any, progress in fulfilling any of these demands was observed six months later, in Assembly Resolution 1398 (2004).

24. The local elections held on 17 December 2004 were observed by the Congress of Local and Regional Authorities of the Council of Europe. Although the general climate was calm, open and friendly, the delegation observed a number of serious irregularities, the nature of which could prejudice the fairness of the electoral process. The Congress delegation also concluded<sup>2</sup> that the conditions of the pre-election period, such as the degree of equality of access to the media and level of campaigning, failed to ensure the environment essential for fully democratic elections.

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<sup>2</sup> Report on Local Elections in Azerbaijan, 17 December 2004 – Rapporteur: Wim Van Gelder (Netherlands, EPP/CD, R) – Document adopted by the Bureau of the Congress on 23 February 2005.

## **2.2. The legislative framework still needs improvement**

25. The Venice Commission and the OSCE-ODIHR have been engaged in an intensive dialogue with the drafters of the successive versions of the electoral code throughout all the stages of the drafting process. The Electoral Code of the Republic of Azerbaijan, which governs the conduct of referendums and parliamentary, presidential and municipal elections in one comprehensive document, was finally adopted by parliament on 27 May 2003.

26. However, some important recommendations were not taken into consideration in the final text. First and foremost, it preserved provisions giving the majority party in Parliament an exceptionally strong influence over not only the CEC but all subordinate commissions. However, under the transitional provisions of the Code, which will operate until 2005, a greater role in nominating members of the electoral commissions was given to some opposition parties not represented in Parliament. At the time, both the Venice Commission and the OSCE-ODIHR expressed doubts as to whether there would be an effective counterbalance to the otherwise dominant influence of the majority parliamentary party. They concluded nevertheless that the election code provided a comprehensive framework for the conduct of elections and referenda which in most respects appeared to meet international standards and best practices. At the same time, they pointed out that the most important challenge would be to ensure its proper implementation.

27. Following the 2003 presidential elections, a new joint opinion<sup>3</sup> was prepared. Adopted in March 2004, it concluded again that the Election Code was still far too complex; that the composition of the Central Election Commission (CEC), Constituency Election Commissions (ConECs) and Precinct Election Commissions (PECs) set out in the Election Code and the transitional provisions, should be revised; that the registration of candidates needed to be dramatically improved; that refusing registration of candidates for presidential election should be well reasoned and exceptional and allow for a fair appeal procedure.

28. Two particular points remained bones of contention: the pre-election gatherings and, according to the law on NGOs, the impossibility for NGOs receiving more than 30% of foreign funding to appoint election observers. Concerning the gatherings, the joint opinion recommended amending not only the Election Code (Art. 86), so that the election commissions be given specific power to recommend to local authorities to provide venues for election rallies under the same conditions for all contenders. The Law on the Freedom of Assembly should equally be amended "to curtail the unlimited powers given to the local authorities to restrict political gatherings and to ensure that genuine freedom of assembly is respected during election periods".

29. After the local elections held in December 2004, the authorities agreed to resume discussions with experts as to possible changes in the electoral legislation ahead of the coming parliamentary elections. The parties agreed on the following agenda: the authorities of Azerbaijan would prepare a draft text of the reform based on the recommendations by ODIHR/Venice Commission adopted in 2004. It should be transmitted to the experts of the two institutions by the end of March 2005 for comments. A new working session could be organised before the end of April so that the text of the amendments could be transmitted to the Parliament in May or June 2005.

30. The draft amendments to the electoral code were however submitted to the OSCE and Venice Commission experts only towards the end of April 2005. Preliminary comments by individual experts suggest that a substantial part of the joint Venice Commission/ODIHR's recommendations have still not been taken into consideration. For example, no change in the composition of electoral commissions is foreseen.

31. We consider that amending the electoral code in full compliance with the OSCE and Venice Commission's recommendations before the end of June 2005 is fundamental and urgent. With parliament's summer recess starting beginning of July together with the electoral campaign, it seems unlikely that any major changes to the electoral code will indeed be adopted.

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<sup>3</sup> See joint ODIHR/Venice Commission recommendations on electoral legislation and practice adopted at the 8<sup>th</sup> meeting of the Council of Democratic Elections and endorsed by the Venice Commission at its 58<sup>th</sup> Plenary Session (Venice, 12-13 March 2004, doc. CDL-AD(2004)016rev).



### 2.3. *The current situation*

32. The rather limited scope of the proposed amendments to the electoral legislation is not surprising. During our meetings in Baku, none of the competent authorities committed themselves to far-reaching changes. This blatant absence of political will in our view seriously compromises the fairness of the election campaign and bodes ill for the forthcoming elections.

33. Another major new problem concerning the registration of candidates was raised by several opposition leaders. Although the relevant legal provisions are not very clear, it seems that each candidate would either have to collect a minimum of 450 signatures (Article 147) or pay a registration fee which for these elections will be over 11,000 USD<sup>4</sup>, not always refundable.

34. Although the use of the deposit/fee is voluntary, many opposition representatives fear that the alternative – presenting 450 signatures – is too unreliable because they can always be invalidated by a biased electoral body. This means that if a party wants to present, for instance, 100 candidates and decides to go for the deposit option, it would have to pay over 1 mln USD!

35. There have not been complaints about this deposit in the past because the previous parliamentary elections were still held under a mixed system, under which there were party lists. Moreover, when the new law was passed in 2003, the minimum monthly salary was 5.20 USD.

36. This situation is clearly unacceptable and will have to be changed before the beginning of the electoral campaign.

37. The CEC assured us that no violations would be allowed; that the accuracy of the voters' lists would be improved. They would gladly participate in the discussions on the improvement of the electoral code between the Presidential administration and the Venice Commission.

## 3. **Pre-election political spectrum**

### 3.1. *Political alliances*

38. The holding of parliamentary elections, under a majoritarian system has influenced the tactics of both incumbents and opposition. During our last visit, we observed a clear understanding amongst opposition parties that they needed to join forces and present common candidates in every constituency. This is an important positive development.

39. Two major opposition blocs have emerged.

– The "Success" election block unites the Musavat Party (led by Isa Gambar), the Democratic Party of Azerbaijan and the progressive wing of the Popular Front Party of Azerbaijan (the latter being led by Ali Kerimli). The triple alliance announced on 18 March that they would present a single list of candidates.

– The Yeni Siyaset – YES (New Policy) electoral bloc was formed on 12 April by a group of prominent political and civic figures. It is led by Lala-Shovket Hadjieva, the leader of the Movement for National Unity; Eldar Namazov, head of the public forum "For the name of Azerbaijan" (both former presidential advisors); the former Deputy Prime Minister Ali Masimov; the former Azerbaijan National Independence Party leader Etibar Mamedov (who was the main opposition candidate in the 1998 presidential elections); and the head of the Movement of the Intelligentsia, Eldaniz Guliev. The bloc advocates a "non-violent transition from a corrupt, authoritarian clan society to a democracy".

40. A very recent movement "16 October", established on the initiative of the recently released seven political leaders, is not stating for the moment any intention of presenting their own candidates but rather advocates creating the conditions for the conduct of fair and democratic elections. It might at a certain point serve as a bridge between the triple union and YES.

<sup>4</sup> The deposit is equal to 3% of the maximum amount that can be spent on a campaign (Art. 58.5), which for the parliamentary election is 15,000 times the minimum [monthly] salary (Art. 156.1). Today the minimum monthly salary is 25.00 USD.

72. Another development has been the evolution of the commercial channel ANS TV, which over the last couple of months has become unusually critical, for example qualifying the Azerbaijani State anti-corruption efforts as hypocrisy. However, ANS has mostly criticised officials and bureaucrats and never the President himself. ANS has recently started publishing a magazine and one recent article listed the richest people in Azerbaijan, which was not taken well by a number of people. One of them, the uncle of the Azerbaijani President and brother of the late president Heydar Aliyev, MP Calal Aliyev, violently attacked the deputy chief of ANS TV station Mirsahin Agayev in an intervention in Parliament, according to whom Mr. Aliyev's intervention, which among other called on other MPs "to rise and bash his brains in/smash his head".

73. This incident is quite revealing of the atmosphere in which independent journalists have to operate. It has to be acknowledged, however, that a day later ANS TV showed Mirsahin Agayev and his brother meeting with President Ilham Aliyev. Reportedly the President stated that he supported free media and that attacks on journalists were wrong.

74. In any case, even if the Public TV starts operating before the elections and some substantial editorial changes are introduced in AzTV1 (which for the moment seems unlikely), time would be too short to create a genuinely diverse and pluralistic media environment before the elections.

#### *4.2.4. Freedom of information*

75. Assembly Resolution 1358 (2004) of the Parliamentary Assembly had also called on Azerbaijan to adopt a Law on freedom of information, which deals with access to official documents. Although discussions with CoE and OSCE experts are going on, no substantial progress has been achieved.

#### *4.3. Freedom of association*

76. NGOs still continue to have difficulties in registering. Representatives of certain leading NGOs told us that they had received threats, or that their homes were searched in their absence.

77. A report released on 5 May by the OSCE Office in Baku stated that the registration of non-governmental organisations in Azerbaijan continues to be problematic. The document, prepared by two Azerbaijani lawyers, examines the changes in the NGO registration process since the adoption in 2003 of the law on State Registration and State Register of Legal Entities. It also analyses the results of a 2004 monitoring programme and highlights the fact that the lack of registration status significantly hindered NGOs from functioning properly and prevented donors from offering financial support to unregistered NGOs.

78. The OSCE report raises concerns over the rejection of registration on irrelevant grounds, the occasional misinterpretation of legal provisions, the prolongation of the processing times without proper grounds, the hampering of the registration process as a result of its centralisation and the lack of clearly defined reasons for the final rejection of NGO registration.

79. At our meeting in the Ministry of Justice we were assured that many of these problems would be rectified with the establishment of a new format for the Register of Legal Entities. The idea was to streamline and simplify the registration process. It remains unclear though and we would appreciate additional information from the authorities as to whether all the existing NGOs will have to be re-registered. In any case, we will continue to monitor the situation.

#### *4.4. The right to a fair trial*

80. On 20 March President Ilham Aliyev issued a decree pardoning 115 prisoners, including 53 persons considered by the Council of Europe as political prisoners and the seven opposition leaders imprisoned following the October 2003 events.

81. This issue is covered extensively in the report of our colleague Malcolm Bruce on political prisoners in Azerbaijan. The present report will therefore only concentrate on the facts which have a direct incidence to the elections.

82. The release of the opposition leaders was an act of mercy; not necessarily one of justice. The Supreme Court upheld their verdicts, although the OSCE trial monitoring report had concluded: "Many of the trials of persons accused of various offences relating to the post-election violence in Azerbaijan were not in compliance with a variety of the government of Azerbaijan's OSCE commitments on human rights and rule of law. Some aspects of the conduct of the trials and treatment of the defendants, moreover, appeared clearly to contravene Azerbaijan's legal obligations under the International Covenant on Civil and Political Rights, the UN Convention Against Torture, the European Convention on Human Rights, and the European Convention on the Prevention of Torture. Of particular concern are pervasive, credible allegations from the accused and from trial witnesses of torture and other ill-treatment".

83. The day before we were due to meet the Chairwoman of the Supreme Court she and her colleague chairing the Court of Appeal were dismissed. The only explanation we were given had to do with irregularities in their activities – it is unclear whether the dismissals were related to the conclusions of the OSCE report.

84. One thing though is clear - the Criminal Code will continue to be a machine for fabricating political prisoners, possibly also during the forthcoming elections, until it is revised and brought in conformity with European norms. Its current version was adopted in 2000 and has elements dating back to the Soviet criminal code of the 1960s. Under its provisions, street disturbances are treated as organised crime; hence they are dealt with not by police crowd control units, but by the Ministry of Interior department for Combating Organised Crime.

85. The most striking fact, however, was that the person who in the OSCE report had been identified as one of the main torturers, Vilayat Eivazov, has recently been promoted to the post of Deputy Minister of the Interior. The Interior Minister defended this promotion by pointing to the great achievements of Mr Eivazov in combating organised crime and by denying any knowledge of involvement in instances of torture.

## **5. Other key issues related to the holding of free and fair elections**

### **5.1. Law and order**

86. It was recently revealed that a criminal gang headed by the former Interior Ministry official Hadji Mamedov had performed kidnappings, money extortions and killings for many years in full impunity. The gang was finally caught after abducting the wife of the president of the International Bank of Azerbaijan and asking USD 20 million for her release. The criminals apparently did not take into consideration the fact that their victim was closely related to the President. The National Security Ministry launched a massive operation. The wife of the president of the International Bank was found in a concrete bunker belonging to a senior police official who was apprehended together with some 20 other people, seven of them Interior Ministry officials.

87. It appears that information about the gang had been sent by the then Prosecutor General to the National Security Minister already in 2001-2003. It is difficult to imagine that the highest levels of power had not been informed. The authorities must absolutely shed full light on the crimes committed by this gang.

88. In any democratic country such a revelation would have led to a serious government crisis and to parliamentary enquiries. In Azerbaijan, however, the scandal was appeased simply with the resignation of the deputy minister of Interior and the dismissal of the deputy minister of National Security, of the direct superior of Hadji Mamedov, the head of the Department of Criminal Investigations and of a few other lower-ranking officials.

89. The Minister of Interior was more anxious to defend the image of all the honest people who work in the police rather than to condemn the gang. He acknowledged that there have been serious violations by other officers and that internal security had been tightened.

## **5.2. The penitentiary system**

90. Violent incidents were reported on 15 February at Strict regime penitentiary establishment No. 11 in Baku. On 15 February, some 100 of the total of 842 inmates congregated on the roof of the building to demand the resignation of the governor Oktay Hasanov. Having initially attempted to negotiate with the protesters, the Azerbaijani authorities deployed Interior Ministry troops to suppress the riot in the early morning hours of 16 February. Journalists reported gunfire and explosions, after which fire engines sprayed water on the protesters. Turan reported that an unspecified number of prisoners and Interior Ministry troops were injured. The Prosecutor-General's Office has opened a criminal case in connection with the riot. At around the same time, prisoners in several other establishments apparently staged protests against the prison administration. In the early morning of 19 February, operations were conducted at penitentiary establishments Nos. 2, 6, 12, 13, 14 and Gobustan Prison by special squads of the Ministries of Justice and Interior. It would appear that the operations were accompanied by the use of physical force against prisoners and the confiscation of illegally kept items.

91. President Aliyev on 3 March said that he was "horrified" over the conditions in prisons. "I even could not imagine that violations of the law could be so terrible and incompatible with all moral and ethic norms", he was quoted as saying. Three prison directors, including the one of prison No. 11, were dismissed. Moreover, by the order of the President, the Deputy Minister of Justice, the Chief of the General Department of Execution of Court Decisions and other officials were also dismissed.

92. We were assured that since then conditions in prisons have improved. The CPT carried out an ad hoc visit to Azerbaijan from 16 to 20 May 2005. The Azerbaijani authorities should authorise the publication of the report adopted by the CPT on this visit as soon as possible.

## **5.3. The reform of the judiciary**

93. The functioning of the courts will have a major incidence as to whether the elections can be recognised as free and fair.

94. The Law on the Judicial Legal Council, as well as the Law amending and completing the 1997 Law on Courts and Judges, were adopted by parliament and entered into force in January 2005. Council of Europe experts have been meeting officials from the Ministry of Justice regularly in order to organise the best possible practical implementation. They have drafted the Regulation on the Judges Selection Committee. Its members have already been elected among the candidates put forward by the Supreme Court, Appeal Courts, the Supreme Court of Nakhichevan Autonomous Republic, the Ministry of Justice, the General Prosecutor's Office and the Bar Association. The first set of exams for new judges will be held by mid – 2005.

95. Azerbaijan probably has the lowest number of lawyers per inhabitant in the world and there is a serious problem ensuring proper defence especially in criminal cases, as the lawyers have to be members of a very closed, tightly controlled Bar Association. An amended Law on Advocates came into effect in the summer of 2004 with the intention to expand the number of advocates available to defend people in criminal cases. However, an amendment doing away with the method of secret balloting previously agreed with the Council of Europe experts, was rushed through parliament and came into effect the day when the constitutive meeting of the new collegium was scheduled. According to an ABA-OSCE report on the situation of lawyers in Azerbaijan, at the constitutive meeting numerous policemen in plain clothes were noticed amongst the participants. The candidates were elected in total chaos.

96. The first exams for new members were conducted by the New Bar Association and were monitored by the main competent international organisations, including the Council of Europe. They pointed out that very short notice had been given to the possible candidates and that a large number of experienced lawyers had not been admitted to the exam, for various administrative reasons. As a result of the exams the number of members has grown to nearly 550 but this is still highly insufficient.

97. The government has committed itself to conducting new exams but the competent international organisations insist on revision of several key elements of the selection procedure beforehand.

## 6. Conclusions

98. During our visit we heard a deeply disturbing comment: that with the prospect of massive oil revenues, Azerbaijan might be prepared to bypass democracy. We were therefore glad that the President of the Republic confirmed what is our firm belief – that no sector of economic and public life will be able to develop properly if there is no stable democracy. We have also been reassured by a statement President Aliev made in early May calling on all the Governors and local authorities in the country to respect freedom of expression and peaceful rally in the run-up to the November elections.

99. Notwithstanding these presidential declarations, the concrete situation in the country, however, shows that the meaning of the word "stability" might still not be the same as what it is understood in a mature democracy. When "stability" is achieved at the price of harassing, arresting and imprisoning opponents, stifling freedom of expression and not allowing freedom of assembly, this might look like keeping things under control for the moment, but might easily turn into a recipe for disaster in the future.

100. A stable democracy is achieved through free and fair elections in which there is a free confrontation of ideas, not of fists. Alternance of political forces is something not simply normal but essential for a democracy to persist and develop. Otherwise a country can easily slip into autocracy.

101. The authorities assured us that all the fundamental freedoms would be guaranteed with the start of the election campaign. They deserve every encouragement and assistance in doing so. However, as our delegation repeatedly stressed, this respect should be an everyday routine, not simply a formalistic fulfilment of an obligation for the eyes of international observers.

102. We sincerely hope that the Azeri parliamentary delegation will continue its constructive participation in the Parliamentary Assembly. We know that introducing far-reaching changes is not an easy and quick task, but if Azerbaijan has committed itself upon accession, the political forces in the country must afterwards be prepared to do their utmost to live up to these commitments.

Appendix

**COMMITTEE ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS  
BY MEMBER STATES OF THE COUNCIL OF EUROPE**

**Visit of the co-rapporteurs of the Monitoring Committee of the PACE  
to Azerbaijan  
(17-21 April 2005)**

**PROGRAMME**

**Members of the delegation:**

Co-rapporteurs: Mr Andreas GROSS (Switzerland, SOC)  
Mr Andres HERKEL (Estonia, EPP/CD)

Secretariat: Mrs Bonnie THEOPHILOVA-PERMAUL, Co-Secretary to the PACE Monitoring Committee

**Sunday, 17 April 2005**

- 21.00 Arrival of Mr A. GROSS and Mrs B THEOPHILOVA-PERMAUL at Heydar Aliyev International Airport (flight LH 612)  
Accommodation at the "Old City" Hotel
- 23.30 Arrival of Mr A. HERKEL at Heydar Aliyev International Airport (flight BA 6613)  
Accommodation at the "Old City" Hotel

**Monday, 18 April 2005**

- 09.00 Meeting with Ambassadors of the Council of Europe member states in Azerbaijan
- 10.30 Meeting with representatives of the media
- 12.30 Meeting with Mr Sardar JALALOGHLU, Secretary General of the Azerbaijan Democrat Party
- 13:00 Meeting with Mr Ali ALIYEV, Chairman of the Azerbaijan National Independence Party
- 13.30 Working lunch with Mr Mats LINDBERG, Special Representative of the Secretary General of the Council of Europe in Baku and Mr Maurizio PAVESI, Head of the OSCE Office in Baku
- 15.00 Meeting with the Board and Director General of the Public TV
- 16.30 Meeting with Mr Igbal AGAZADE, Chairman of the Umid Party
- 17.00 Meeting with Mr Arzu ABDULLAYEVA, Monitoring Group of NGOs
- 18.30 Meeting with Mr Eldar ZEYNALOV, Federation of Human Rights NGOs
- 19.30 Meeting with Mr Fuad MUSTAFAYEV, Deputy Chairman of the Azerbaijan Popular Front Party
- 20.45 Meeting with Mr Vurgun EYYUB, Deputy Chairman of the Musavat Party

**Tuesday, 19 April 2005**

- 09.00 Meeting with Mr Hajibala ABUTALIBOV, Head of the Executive Power of Baku
- 10.00 Meeting with Mr Mazahir PANAHOV, Chairman and members of the Central Election Commission
- 11.15 Meeting with Mr Ramil USUBOV, Minister of the Interior
- 12.30 Meeting with Mr Toghrul MUSAYEV, Deputy Minister of Justice
- 13.30 Lunch
- 14.30 Meeting with the parliamentary delegation to the PACE
- 15.30 Departure to Colony No. 7 and to Gobustan prison
- 22.30 Meeting with Mr Lala SHÖVKET

**Wednesday, 20 April 2005**

- 8.00 Meeting with the EU-Azerbaijan Parliamentary Cooperation Committee
- 9.30 Meeting with Mr Farhad ABDULLAYEV, Chairman of the Constitutional Court
- 10.45 Meeting with Mr Ali AHMADOV, Executive Secretary of the Yeni Azerbaijan Party
- 11.45 Meeting with Mr Reno HARNISH, US Ambassador to Azerbaijan
- 15.30 Meeting with Mr Ramiz MEHDIYEV, Head of the Presidential Administration
- 17.00 Meeting with H.E. Mr Illham ALIYEV, President of the Republic of Azerbaijan
- 19.00 Press Conference

**Thursday, 21 April 2005**

- 05.05 Departure of Mr A. GROSS and Mrs B. THEOPHILOVA-PERMAUL from Heydar Aliyev International Airport (flight OS 882)
- 11.55 Departure of Mr A. HERKEL from Heydar Aliyev International Airport (flight BA 6614)

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

*Reference to committee:* Resolution 1115 (1997) of 27 January 1997

*Draft resolution* unanimously adopted by the committee on 1 June 2005.

*Members of the committee:* Mr György **Frun**da (Chairperson), Mrs Hanne **Severinsen**, Mrs Naira **Shakhtakhtinskaya**, Mr Mikko **Elo** (Vice-Chairpersons), Mr Pedro Agramunt, Mr Bakhtiyar **Aliyev**, Mr René André, Mr Giuseppe Arzilli, Mr David **Atkinson**, Mr Jaime Bartumeu Cassany, Mrs Mertixell Batet, Mrs Gülsün **Bilgehan**, Mr Rudolf **Bindig**, Mrs Mimount Bousakla, Mr Luc **Van den Brande**, Mr Patrick Breen, Mrs Beáta Brestensktá, Mr Milos **Budin**, Mr Mevlüt Çavuşoğlu, Mr Jonas **Čekuolis**, Mr Doros Christodoulides, 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 Stef Goris, Mr Andreas **Gross**, Mr Alfred Gusenbauer, Mr Michael Hagberg, Mr Michael **Hancock**, Mr Andres **Herkel**, Mr Serhiy **Holovaty**, Mr Jerzy **Jaskiernia**, Mr Erik Jurgens, Lord **Kilclooney** of Armagh, Mr Evgeni Kirilov, Mr Shavarsh Kocharian, Ms Synnøve Konglevoll, Mr Konstantin Kosachev, Mr André Kvakkestad, Mrs Darja Lavtižar-Bebler, Mrs Sabine Leutheusser-Schnarrenberger, Mr Eduard Lintner, Mr Mikhail **Margelov**, Mr Dick Marty, Mr Frano Matušić, Mr José Medeiros Ferreira, Mr Miloš **Melčák**, Mr Azim **Mollazade**, Mr Zsolt Németh, Mr İbrahim Özal, Mr Theodoros Pangalos, Mrs Eleonora Petrova-Mitevskaa, Mrs Sólveig Pétursdóttir, Mr Leo Platvoet, Mr Christos Pourgourides, Mr Dumitru Prijmireanu, Mr Anatoliy **Rakhansky**, Mr Dario Rivolta, Mr Armen **Rustamyan**, Mrs Katrin Saks, Mr Kimmo **Sasi**, Mr Adrian Severin, Mr Vitaliy Shybko, Mr Leonid **Slutsky**, Mr Jerzy Smorawiński, Mr Michael Spindelegger, Mrs Maria Stoyanova, Mr Qazim Tepshi, Mrs Elene **Tevdoradze**, Mr Tigran Torosyan, Mr Miltiadis Varvitsiotis, Mrs Biruté Vésaitė, Mr Rudolf **Vis**, Mr Oldřich Vojříř, Mrs Renate **Wohlwend**, Mr Marco Zacchera, Mr Emanuelis **Zingeris**.

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

*Head of the secretariat:* Mrs Ravaud

*Secretaries to the committee:* Mr Gruden, Mrs Teophilova-Permaul, Mr Kotlyar.