

Institute for Reporters' Freedom and Safety



OPINION No.222

Implementation of Azerbaijan's
commitments to the
Council of Europe in the field of
fundamental freedoms



Carpets, donated by Azerbaijan. Photo: www.coe.int

FROM THE REPUBLIC OF AZERBAIJAN
2001-2002

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commitments to the Council of Europe
in the field of fundamental freedoms

Azerbaijan's capital, Baku ahead of Eurovision Song Contest 2012. Photo: Eurofestival



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Acronyms

ANS	– Azerbaijan News Service
APA	– Azeri-Press Agency
AzTV	– Azerbaijani Television
BTC	– Baku–Tbilisi–Ceyhan
CIS	– Commonwealth of Independent States
ECHR	– European Convention on Human Rights
ECtHR	– European Court of Human Rights
EPP/CD	– Group of the European People's Party at the Council of Europe
EU	– European Union
ICCPR	– International Covenant on Civil and Political Rights
IRFS	– Institute for Reporters' Freedom and Safety
JSC	– Joint Stock Company
LRAD	– Long Range Acoustic Device
MP	– Member of Parliament
NATO	– North Atlantic Treaty Organization
PACE	– Parliamentary Assembly of the Council of Europe
POC	– Prisoner of Conscience
RFE/RL	– Radio Free Europe/Radio Liberty
NGO	– Non-Governmental Organization
NTRC	– National Television and Radio Council
ODIHR	– Office for Democratic Institutions and Human Rights
OGP	– Open Governance Partnership
OSCE	– Organization for Security and Co-operation in Europe
PACE	– Parliamentary Assembly of the Council of Europe
SOC	– Socialist Group
UN	– United Nations
YAP	– Yeni Azerbaijan Party

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Summary

The Assembly considers that Azerbaijan is moving towards a democratic, pluralist society in which human rights and the rule of law are respected, and, in accordance with Article 4 of the Statute of the Council of Europe, is able and willing to continue the democratic reforms initiated in order to bring its entire legislation and practice into conformity with the principles and standards of the Council of Europe.

Opinion No. 222 (2000)¹

More than 12 years after Azerbaijan's accession to the Council of Europe, and on the eve of Azerbaijan's chairmanship of the Committee of Ministers, the Council of Europe remains an important organization for Azerbaijan. The Council of Europe gives Azerbaijan the opportunity to participate fully, and on an equal footing with other member states, to cooperate with Europe in the field of human rights, rule of law and democracy.

Accession has above all enabled Azerbaijan to take part in debates and to have its voice heard. Through accession, Azerbaijan has been offered the opportunity to share its experience with other countries and to participate closely in defining norms with regard to human rights, rule of law and democracy, at the European level.

When Azerbaijan joined the Council of Europe on 25 January 2001, it agreed not only to honor the obligations incumbent on all member states under Article 3 of the organization's Statute,² but also to a number of specific commitments, set out in Opinion No. 222 (2000) on Azerbaijan's application for membership of the Council of Europe.

Despite hopes that accession to the Council of Europe in 2001 would have had a significant influence on the development of fundamental rights within the country, Azerbaijani citizens continue to suffer diverse forms of repression and violations that affect nearly the entire spectrum of their human rights.

The Azerbaijani authorities continue to act in blatant disregard to their commitments, which were the basis of Opinion No. 222 (2000) on Azerbaijan's request for membership.

¹ Opinion No. 222. (2000) Azerbaijan's application for membership in the Council of Europe. <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/EOPI222.htm>

² Statute of the Council of Europe, London, 5.V.1949 <http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm>

On 28 June 2000, the Parliamentary Assembly of the Council of Europe (PACE) adopted Opinion No. 222 (2000) on Azerbaijan's request for membership of the Council of Europe. On the basis of a list of commitments entered into by Azerbaijan, signed by the President of Azerbaijan and the Speaker of the Azerbaijani Parliament, and a number of expectations formulated by the Assembly, it was recommended that Azerbaijan be invited to become a member of the Council of Europe.

PACE took its decision on the basis of specific commitments undertaken by the Azerbaijani government in a document signed by then-President of Azerbaijan Heydar Aliyev and the Speaker of the Azerbaijani Parliament, and a list of clearly formulated expectations.

IRFS notes with dismay that the Azerbaijani authorities have since acted in blatant disregard of their commitments. The repressive measures taken against the media and critical voices, and the adoption of draconian pieces of legislation that contradict international standards have cast severe doubt on their good faith.

The transfer of power from Heydar Aliyev to his son, Ilham Aliyev, who was elected president in October 2003, raised hopes that the Soviet-style regime would become more moderate. However, Ilham Aliyev disappointed these hopes, despite his rhetoric on the need to cooperate with the West, including the Council of Europe, the EU, and NATO, and enact reform to comply with European standards, and has instead continued many of his father's practices, including his strategy of authoritarian rule. International assessments of the degree of democratization, such as, inter alia, Freedom House rankings, and Human Rights Watch and Amnesty International reports, in fact found that the Azerbaijani government has regressed on all fundamental freedoms.

The situation of political prisoners in Azerbaijan has been a subject of concern to the Parliamentary Assembly ever since Azerbaijan acceded to the Council of Europe. Solving the problem of political prisoners by releasing them, or by conducting new, objective court proceedings in the cases of persons who were recognized as political prisoners, was one of the obligations, which Azerbaijan undertook upon acceding to the European Convention on Human Rights.³ Although more than 12 years have passed since accession, politically motivated arrests are still widely practiced in Azerbaijan.

As Ilham Aliyev is running for a third term in office, the rights to freedom of expression, association and assembly have come under increasing attack, despite the fact that these rights are explicitly guaranteed by the Azerbaijani Constitution and international human rights treaties to which Azerbaijan is party.

This report provides a comprehensive review of the implementation of Azerbaijan's commitments to the Council of Europe with regard to the fundamental freedoms of expression, assembly and association.

³ Azerbaijan signed the European Convention on Human Rights in January 2001 and ratified it in April 2002. The European Convention on Human Rights, Rome 4 November 1950 and its Five Protocols, is available at <http://www.hri.org/docs/ECHR50.html>

Recommendations

Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council as specified in Chapter I.

Statute of the Council of Europe, Chapter II, Article 3

Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.

Statute of the Council of Europe, Chapter II, Article 8⁴

The Council of Europe must demand that the Azerbaijani government strictly respect its commitments and meet the expectations set out in Opinion No. 222 (2000), and that the Azerbaijani Parliament act accordingly, in order to continue enjoying the privilege of membership in the Council of Europe.

Specifically, the Council of Europe must compel the Azerbaijani government to:

- Enact judicial reform in Azerbaijan to ensure that the courts operate freely and independently.
- Honor its commitment to release all political prisoners, including journalists, bloggers and human rights defenders in prison or detention in connection with exercising their right to freedom of expression, and to stop using the courts to imprison critics and opponents.
- Fulfill its commitments to freedom of expression and take immediate, concrete steps to create an environment conducive to freedom of expression in Azerbaijan. End all forms of impunity for violence against journalists and ensure that all cases are adequately investigated and those responsible are brought to justice. Reverse regressive amendments to freedom of information legislation aimed at limiting the activities of journalists and media outlets. Remove defamation provisions from the Criminal Code.

⁴ Statute of the Council of Europe, London, 5.V.1949, <http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm>

- Implement the Concluding Observations of the UN Human Rights Committee (August 2009) and the UN Universal Periodic Review recommendations (April 2013).
- Implement all relevant Council of Europe recommendations and resolutions, namely resolutions 1272 (2002),⁵ 1305 (2002),⁶ 1358 (2004),⁷ 1359 (2004),⁸ 1398 (2004),⁹ 1456 (2005),¹⁰ 1457 (2005),¹¹ 1480 (2006),¹² 1545 (2007),¹³ 1614 (2008),¹⁴ 1750 (2010),¹⁵ 1917 (2013),¹⁶ and Recommendation 1641 (2004).¹⁷
- Take effective measures to ensure that the Ombudsperson's Office is in practice a functioning, independent body, in compliance with the Paris Principles, relating to the status of national institutions of human rights.
- Respect the rights to freedom of assembly and association and the right to religious freedom in legislation and in practice. Reverse draconian amendments to the freedom of assembly law providing for steep fines for organizers and protesters of unsanctioned protests. Repeal regressive amendments to the NGO law and other laws restricting the ability of independent NGOs to operate.
- Immediately begin a dialogue with civil society to discuss major human rights concerns.

While the Council of Europe should continue to use PACE monitoring procedures to document and report on violations of human rights in Azerbaijan, Strasbourg should put a concrete deadline before Baku to implement the above-mentioned measures. The Council of Europe, recognized as a pan-European human rights monitoring organization, should hold the current regime accountable, for, inter alia, failing to properly investigate a series of outrageous crimes against human rights. These crimes include but are not limited to the murder of two journalists, Elmar Huseynov and Rafiq Tagi; allowing for the death in prison of another journalist, Novruzali Mammadov; the ongoing harassment and intimidation and gross privacy violations of journalist Khadija Ismayilova; and hundreds of violent attacks against journalists and media workers.¹⁸

⁵ bit.ly/1d1IUbR

⁶ bit.ly/1amdJFZ

⁷ bit.ly/14HzqMf

⁸ bit.ly/1ayB8rd

⁹ bit.ly/17TxxNB

¹⁰ bit.ly/19y6fil

¹¹ bit.ly/1d1m1nD

¹² bit.ly/18QXM7k

¹³ bit.ly/1aJXByK

¹⁴ bit.ly/14UQLDZ

¹⁵ bit.ly/1d1npGR

¹⁶ bit.ly/146SEwd

¹⁷ bit.ly/14UQSzp

¹⁸ For more information, see inter alia, IRFS's report "The Right to Remain Silent" available at <http://bit.ly/151FRiB>



President of the Republic of Azerbaijan (1993-2003) Heydar Aliyev, (first row third from the left) attends Second Summit of the Council of Europe 1997. Photo: www.coe.int

IRFS notes that since the failure of the Parliamentary Assembly to hold Azerbaijan to account for the serious problem of political prisoners in the country with the failure to pass a key resolution on the issue in January 2013, the situation has dramatically worsened, with dozens of new political arrests this year. According to the Baku-based Human Rights Club, there are now more than 100 cases of political prisoners in Azerbaijan. The Assembly must take urgent action to address this situation, which is likely to continue to worsen in the run-up to and aftermath of Azerbaijan's October 2013 presidential election.

PACE should appoint a new special rapporteur tasked with examining the situation of political prisoners in Azerbaijan, who should be provided with sufficient resources and political support to monitor the situation and visit the country, to coordinate and work effectively with other actors, including the PACE Co-rapporteurs on Azerbaijan, and to present periodic reports to the Assembly. The Assembly should take concrete steps to ensure that Azerbaijan is held accountable for cooperating with the special rapporteur.

Greater efforts should be made to ensure implementation by Azerbaijan of recommendations made in PACE resolutions, in particular the monitoring report from January 2013, support for which was used by many PACE delegates as a reason to vote against the resolution on the political prisoner situation in the country.

The Committee of Ministers—the Council of Europe's decision-making body, comprised of the Foreign Affairs Ministers of all member states—should use its authority to insist that Azerbaijan fulfill the human rights commitments laid out in Opinion 222, implement the recommendations outlined in the PACE resolutions and the Human Rights Commissioner's reports, and take the steps needed to fully execute judgments of the European Court of Human Rights against Azerbaijan.

The Committee of Ministers should exert serious political pressure on the Azerbaijani authorities until they fulfill the human rights commitments laid out in Opinion 222.

Introduction

“I call on the authorities of Azerbaijan to respect the fundamental principles and legally-binding standards of the European Convention on Human Rights, which they have undertaken to uphold when joining the Council of Europe”

Council of Europe Secretary General Thorbjørn Jagland¹⁹

On the eve of Azerbaijan's 9 October presidential election, the Institute for Reporters' Freedom and Safety (IRFS) is publishing its concerns related to the Azerbaijani government's rollback on civil and political rights which has resulted in a serious failure to comply with the country's commitments with the Council of Europe. IRFS raises alarm over the dire state of the fundamental rights to freedom of expression, association and assembly in Azerbaijan.

Since Azerbaijan joined the Council of Europe, a pan-European human rights monitoring organization, in 2001, the space to express critical views in Azerbaijan has been gradually and progressively curtailed. Human rights defenders, representatives of independent civil society organizations, members of the political opposition, activists, and ordinary citizens have all been victims of the Aliyev regime's crackdown on fundamental rights and freedoms.

This report, “Opinion No. 222,” examines the status of Azerbaijan's implementation of its Council of Europe commitments with regard to the fundamental freedoms of expression, assembly and association. This report presents a full account of the Council of Europe's 12-year attempt to hold Azerbaijan responsible for its ongoing disrespect to the legally binding standards of the European Convention on Human Rights.

The report reviews Azerbaijan's domestic legislation, especially those laws relevant to obligations set out in Opinion No.222, and more broadly those relating to or impacting on human rights. The report provides an overview of the authoritarian practices of the Azerbaijani government from 2001 to 2013.

The 104-page report is the culmination of seven years of work of IRFS in support of human rights and democratization in Azerbaijan. The report was written by Gulnara Akhundova, program manager for International Media Support (IMS), based on research she conducted with IRFS researchers Ruslan Aliyev, Parviz Azizov and Gunay Ismayilova, and IRFS CEO and Chairman Emin Huseynov. It was edited by human rights consultant Rebecca Vincent.

The report also draws on previous IRFS research in the fields of freedom of expression, assembly and association.

¹⁹ Press release- DC017 (2013): Thorbjørn Jagland concerned by the recent events in Azerbaijan <https://wcd.coe.int/ViewDoc.jsp?id=2030465&Site=COE>

In preparing the report, IRFS also consulted and analyzed other documents, including the reports of local and international nongovernmental organizations, namely those by Amnesty International, ARTICLE 19, the Committee to Protect Journalists, the European Stability Initiative, Freedom House, Human Rights Watch, the International Partnership Group on Azerbaijan, the OSCE Office for Democratic Institutions and Human Rights, and Reporters Without Borders; Parliamentary Assembly of the Council of Europe documents including resolutions, recommendations, opinions, Monitoring Committee reports, motions, and verbatim records; European Court of Human Rights judgments, country reports and factsheets; opinions by the Venice Commission; Commissioner for Human Rights reports; other documents of the Council of Europe - treaties, their explanatory reports, the status of signatures and ratifications, and the declarations and reservations made by Azerbaijan; as well as press releases and media reports.

The report contains IRFS' recommendations to the Council of Europe on the steps needed to address the deteriorating situation of fundamental freedoms in Azerbaijan.

The report contains five parts covering the relationship between Azerbaijan and several Council of Europe bodies.

Part One outlines key areas of violations in the Azerbaijani government's crackdown on human rights contained in Opinion No.222.

Part Two, a significant part of the report, focuses on the relationship between Azerbaijan and the Parliamentary Assembly of the Council of Europe (PACE), a gathering of 318 men and women from the parliaments of the Council of Europe's 47 member states whose mission is to uphold the shared values of human rights, democracy and the rule of law that are the "common heritage" of the peoples of Europe. PACE is mandated to hold governments to account for their human rights records, and to press states to achieve and maintain democratic standards—which has not happened in the case of Azerbaijan—as described in Part Two of this report.

Part Three provides an overview of the work of the Council of Europe Commissioners for Human Rights in relation to Azerbaijan and their communication with the government of Azerbaijan.

Part Four examines opinions concerning problematic Azerbaijani laws issued by the European Commission for Democracy through Law - better known as the Venice Commission – which is the Council of Europe's advisory body on constitutional matters.

Part Five presents statistics of judgments against Azerbaijan delivered by the European Court of Human Rights and the status of their implementation.

The main finding of this report is that, instead of the Euro-integration, democracy and respect for human rights that the Aliyev regime promised Europe back in 2000, the regime has severely clamped down on European values and human rights commitments set out in Opinion 222. This report reveals increasing harassment of people in Azerbaijan seeking to express their opinions and to stand up for their rights. Other findings and conclusions are provided at the end of the report.

Part One:

Crackdown on rights envisaged in Opinion No. 222



Police crack down on Baku Protesters. Photo: Mehman Huseynov / IRFS

This part of report documents the Azerbaijani government's crackdown on fundamental freedoms, contrary to the country's obligations and commitments set out in Opinion No. 222.²⁰ Those commitments obliged Azerbaijan, inter alia, to guarantee fundamental freedoms and human rights. On the basis of those commitments, the Assembly decided that, in accordance with Article 4 of the Statute of the Council of Europe,²¹ "Azerbaijan was able and willing" to fulfill the provisions of Article 3 of the Statute,²² setting forth the conditions for membership of the Council of Europe: "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council (of Europe)." Almost 13 years after accession, Azerbaijan has yet to meet its commitments to guarantee fundamental freedoms.

²⁰ Opinion No. 222, Azerbaijan's application for membership of the Council of Europe <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/EOP1222.htm>

²¹ Statute of the Council of Europe, London, 5.V.1949 <http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm>

²² Ibid

Chapter One:

Silencing Whistleblowers

(...) to adopt, within one year of its accession, a law on combating corruption and, within two years of its accession, a state program on combating corruption

Opinion No 222 (2000), paragraph iii f

xi. to speedily forward to the Council of Europe for appraisal, according to the initial commitments and obligations entered into by Azerbaijan upon accession, the texts of the following laws before they are signed by the President:

– the Law on Corruption;

– the Law on Registration of Legal Entities;

-(...)

– the Law on Access to Information,

in order to ensure that these are fully in line with Council of Europe standards before they enter into force;

Resolution 1358 (2004)

Functioning of democratic institutions in Azerbaijan²³

In its December 2012 report, *The honoring of obligations and commitments by Azerbaijan*, the PACE Monitoring Committee highlights “the progress achieved in the introduction of a legislative framework aimed at fighting corruption and organized crime.”²⁴

In 2005, Azerbaijan ratified the United Nations Convention Against Corruption,²⁵ thereby undertaking the obligation to “take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) Adopting procedures or regulations allowing

²³ Resolution 1358 (2004) <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta04/ERES1358.htm>

²⁴ Report | Doc. 13084 | 20 December 2012, *The honoring of obligations and commitments by Azerbaijan* <http://bit.ly/18cRBze>

²⁵ UNCAC Signature and Ratification Status as of May 29, 2013. <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and per.”²⁶

Indeed, the Azerbaijani government adopted National Action Plan on the Open Governance Partnership,²⁷ a “multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.”²⁸ But, as has been widely demonstrated, a government’s commitment to anti-corruption is almost directly related to the independence and freedom the news media enjoys in that country. So while Azerbaijan may have signed onto an important accord, a vital domestic resource that would normally hold the government accountable – a watchdog press – has been silenced.

However, Azerbaijan has not signed the updated Council of Europe Convention on money laundering and financing of terrorism Convention (CETS No. 198),²⁹ or the Council of Europe Convention on Access to Official documents (CETS No.205). The Convention has been open for signature since 2009³⁰ and is the first binding international legal instrument to recognize a general right of access to official documents held by public authorities.³¹ To date, 14 countries including Azerbaijan’s neighbor Georgia have signed the document, and six countries have ratified it.³² The document will go into effect when 10 countries have ratified it.

The right to access to information is defined in the country’s law on “The Right to Obtain Information,” which was adopted in 2005. Certain provisions of this law guarantee the public “right to know.” However in 2012, the government adopted a series of regressive amendments to the law on the right to obtain information, the law on the state registration of legal entities, and the law on commercial secrets.

On 6 July 2012, President Aliyev signed into law amendments limiting the disclosure of information by corporate entities, which had been adopted by Parliament on 12 June 2012. Strongly criticized by pro-transparency groups, the changes curtail public access to information about the ownership of commercial entities, the amount of their charter capital, ownership structure, and other similar data. These amendments, known as the “corporate secrecy amendments,” became effective in October 2012.

²⁶ United Nations Convention Against Corruption. Doc. A/58/422. December 14, 2005. http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

²⁷ National Action Plan on the Open Governance Partnership <http://bit.ly/SG9I97>

²⁸ For more information about the Open Governance Partnership see <http://bit.ly/qW85Np>

²⁹ Council of Europe Convention on money laundering and financing of terrorism Convention (CETS No. 198) Status as of: 13/9/2013 <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=198&CM=&DF=&CL=ENG>

³⁰ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=205&CM=1&DF=&CL=ENG>

³¹ Council of Europe Convention on Access to Official Documents. Summary of the Treaty. <http://conventions.coe.int/Treaty/EN/Summaries/Html/205.htm>

³² Council of Europe Convention on Access to Official Documents CETS No: 205 Status as of: 13/9/2013 <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=205&CM=1&DF=&CL=ENG>

The amendments to the 2005 law on commercial information prohibit government officials from distributing information about companies if doing so “contradicts the national interests of Azerbaijan in political, economic, and monetary policy, the defense of public order, the health and moral values of the people, or harms the commercial or other interests of individuals.” The reforms also make the release of information contingent upon receiving permission from all individuals named in the records.

The laws on the right to obtain information and the state registration of legal entities were also amended. The amendments extend the scope of “legitimate public interests” protected in Article 3 of the Constitutional Law of the Republic of Azerbaijan on Regulation of the Exercise of Human Rights and Freedoms, and use language that lacks precision and clarity.

The amendments to the law on state registration of legal entities makes secret the registration information of commercial legal entities, including information about their founders and shareholders. Such information can now only be disclosed on the basis of an inquiry to the courts and investigative bodies, to the subjects of operational search activities in cases specified by law, and to financial monitoring bodies in the cases and manner specified by the law “on the struggle against legalization of funds or other property obtained through criminal means and financing of terrorism.” According to the bill, this information can only be disclosed to relevant bodies, lawyers, and third parties following the consent of the information-owner.

The amendments contradict Article 10.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” The amendments also contradict provisions of the UN Convention against Corruption and the UN’s Global Counter-Terrorism Strategy.³³

The amendments can be viewed as an action by the Azerbaijani government to reject the obligations it had previously undertaken before the Azerbaijani people and the international community to fight corruption. They increase restrictions on freedom of information and breach the principles of transparency and public control over the activity of legal entities. From now on, it will be difficult for journalists to investigate instances of corruption, as they may face punishment under these new amendments.

³³ UN’s Global Counter-Terrorism Strategy, <http://bit.ly/1euCYLo>

Chapter Two: Human Rights Ombudsman

(...) to adopt, within one year of its accession, the law on the Ombudsman.

Opinion No 222 (2000), paragraph iii e

The Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman) was signed into law on 28 December 2001. The Ombudsman is mandated to defend and promote human rights and freedoms, envisaged in the Constitution of the Republic of Azerbaijan and in the international treaties to which the Republic of Azerbaijan is party.

However the decisions made by the Azerbaijani Ombudsman are only of a recommendatory nature, which reduces the effectiveness and efficiency of the Ombudsman's activity. The annual human rights reports produced by the Ombudsman's office only criticize low-ranking officials. The reports highlight minor issues such as bureaucratic governance and practices. The complaints of citizens about mass violations of their rights are not included in these annual reports.

In accordance with the amendments and additions made to the Constitutional Law on Human Rights Commissioner (Ombudsman),³⁴ the latter was given the competence to fulfill the supervision over implementation of requirements envisaged in the Law on Access to Information. The corresponding Presidential Decree was issued on 8 August 2011.

Upon Article 1.3 of the Constitutional Law, the Commissioner supervises the execution of duties by the information-owning state bodies, municipalities and state officials in accordance with the requirements of the Law of the Republic of Azerbaijan "On access to information."

However, the Information Commissioner is in fact non-functional. When any complaint is made to the Information Commissioner over government agencies' failure to respond to appeals or information requests, the Information Commissioner does not take any steps to investigate or eliminate the problem. In other words, neither the Human Rights Commissioner nor the Information Commissioner performs their functions properly. These are just formal structures.

³⁴ Mutatis mutandis see: The Constitutional Law on Human Rights Commissioner (Ombudsman) <http://bit.ly/155AidF>

Chapter Three:

Legal repression of free expression

(...) to guarantee freedom of expression and the independence of the media and journalists, and particularly to exclude the use of administrative measures to restrict the freedom of the media;

Opinion No 222 (2000), paragraph IV d

(...) to re-examine and amend the law on the media, within two years of its accession at the latest;

Opinion No 222 (2000), paragraph IV e

Azerbaijan's freedom of expression record remains extremely poor, with the regime employing both crude and sophisticated tactics to silence critical voices in an attempt to distract the public from widespread government corruption, anti-government protests, and other social issues in the country.

Despite Azerbaijan's commitment to respect and protect the right to freedom of expression through its accession to major international human rights treaties and as provided for in the national legal framework, in practice the authorities do not respect this right. Instead, they use the law to silence criticism and repress dissent. The mere existence of some laws – such as criminal defamation provisions – has a chilling effect on the media community, contributing to widespread practices of self-censorship in the country.

Defamation

Among the most longstanding legal provisions problematic to freedom of expression are the defamation provisions that remain in Azerbaijan's criminal code. At present, defamation remains a criminal offense, carrying a penalty of up to three years in prison. Defamation provisions are not used as frequently to imprison journalists as in previous years, but they are still in use.

IRFS underscores that existing defamation provisions include sanctions, which cannot be regarded as proportionate to the legitimate aim, and thus are contrary to the Azerbaijani Constitution and the National Action Program to Raise Effectiveness of the Protection of Human Rights and Freedoms. Above all, these provisions are incompatible with the requirements of the European Convention on Human Rights and the standards of the Council of Europe and European Court of Human Rights, and are therefore posing serious threats to freedom of expression in Azerbaijan.

The Council of Europe's Resolution 1577 (2007) Toward Decriminalization of Defamation³⁵ states:

'As established in the case law of the European Court of Human Rights (the Court), Article 10 of the European Convention on Human Rights (ETS No. 5) guarantees freedom of expression in respect not only of "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference, but also of those that offend, shock or disturb.'

Azerbaijan is a member of Council of Europe and is bound by its provisions.

Criminal defamation online

On 4 June 2013, Azerbaijani President Ilham Aliyev signed into law amendments to the Criminal Code passed by parliament that would criminalize "defamatory and offensive views" posted on the Internet.³⁶

The amendments allow for the initiation of criminal cases against online activists who post such statements, with penalties of up to three years in prison. The first conviction came two months after the President approved the law – just two weeks after it took effect.

On 14 August 2013, the Astara Regional Court found Mikayil Talibov guilty of slander under Article 147.1 of the Criminal Code of Azerbaijan, sentencing him to one year of "corrective labor" under which 20 per cent of his monthly income would be deducted into the state budget for a period of one year.³⁷

In another case, Javad Javadov, the lawyer of an arrested theologian, was sued by the former investigator in his client's case, for writing an absolutely uncritical post about the investigator on Facebook. Along with the lawyer, *Azadliq* newspaper was also litigated for re-publishing the post.³⁸

³⁵ <http://bit.ly/yOMFcq>

³⁶ <http://bit.ly/14gKMce>

³⁷ <http://bit.ly/1eE7en8>

³⁸ <http://bit.ly/1g8CQfW>

Detention of journalists, bloggers and human rights defenders

The Azerbaijani authorities have a proven track record of using detention as a means of pressure to stifle dissent and protest. Recent years have seen a shift of imprisonment on charges clearly linked with journalists' professional activities – such as defamation – to imprisonment on a wide range of other charges that seem at first glance to be unconnected with their work, but are intended to make an example of critical journalists, bloggers, and human rights defenders. These charges have included hooliganism, drug possession, weapons possession, inciting hatred, supporting terrorism, tax evasion, extortion, and appealing for mass disorder.

As of September 2013, there were nine journalists in detention or prison on politically motivated charges in connection with freedom of expression:

1. **Sardar Alibeyli**, editor-in-chief, *Note Bene* newspaper
2. **Nijat Aliyev**, editor-in-chief, www.azadxeber.net
3. **Araz Guliyev**, editor, xeber44.com
4. **Parviz Hashimli**, correspondent, *Bizim Yol* newspaper
5. **Fuad Huseynov**, freelance journalist
6. **Hilal Mammadov**, editor-in-chief, *Tolishi Sado* newspaper
7. **Faramaz Novruzoglu**, freelance journalist
8. **Tofiq Yagublu**, correspondent, *Yeni Musavat* newspaper
9. **Avaz Zeynalli**, editor-in-chief, *Khural* newspaper

Beyond these journalists, there are two bloggers/activists behind bars who are believed to have been targeted for expressing views critical of the authorities. They are **Rashad Ramazanov** and **Ilkin Rustemzade**. Rustemzade was initially arrested in connection with a Harlem Shake video filmed in Baku, and was later charged with inciting violent protest, along with seven members of the N!DA civic movement. Ramazanov was jailed on trumped-up drug charges, but is believed to have been arrested due to his critical Facebook posts.

In addition to the cases involving journalists and bloggers, as of September 2013, there were two human rights defenders in prison on politically motivated charges in connection with freedom of expression. **Ilham Amiraslanov**, an activist with Kur Civil Society, is serving a two-year prison sentence on weapons possession charges after he accused local officials of misappropriating funding intended for victims of the 2010 Kura river floods. Human rights lawyer **Bakhtiyar Mammadov** is serving an eight-year prison sentence on charges of large-scale extortion, combined with a previous fraud conviction. He was targeted after he represented families who were forcibly evicted from their homes to make way for the construction of Crystal Hall, the venue for the 2012 Eurovision Song Contest.

Chapter Four:

State control over broadcast media

(...) to turn the national television channel into a public channel managed by an independent administrative board;

Opinion 222 (2000), paragraph IV f

In recent years, the government has strengthened its hold over the broadcast media through regulations, direct ownership, or indirect economic control. The nine national channels work in a top-down manner, with one-way communication between the state and citizens. A number of news items on the nationwide broadcast media are presented in a conspicuously similar manner, raising questions over the editorial freedom of these channels. It is alleged that television channels' editorial decisions are determined by the president's office. Many believe that this form of control is done through coercion, given the fact that television managers are closely linked with the country's political elite and are thus willing partners of the ruling regime.

Of the nine national television channels, as many as three are still state-owned. Unlike most of the post-Soviet countries, which have privatized state media or transformed them into public-service media, the Azerbaijani government appears to have taken a different approach. In addition to state-funded AzTV, it has launched two more state broadcasters (Idman Azerbaijan and Medeniyyet Azerbaijan) in the past three years.

According to the "Law on Television and Radio Broadcasting," there are four forms of broadcasting in Azerbaijan: state, public, private and municipal. In addition, Article 5.2 of the Law on Television and Radio Broadcasting stipulates that a "natural or legal person may be the founder (co-founder) of only one TV and radio broadcaster." However, the Azerbaijan Television and Radio Broadcasting JSC is the founder of three television channels (AzTV, Idman Azerbaijan and Medeniyyet TV) and one radio channel (Radio Azerbaijan) which conflicts with the above-mentioned provisions of the law. To date, the National Television and Radio Council (NTRC) has not taken any action to deal with this violation of the law. Thus, instead of fulfilling its obligation³⁹ before the Council of Europe, Azerbaijan has opened two more state televisions, bringing the total number of state-owned television channels to three.

The Azerbaijani broadcast media regulator, the NTRC falls short of its responsibilities defined by the law, while it interferes with matters that are not within its competence. As such, the NTRC fails to periodically publish the list of empty frequencies or take any sanctions against broadcasters that violate the provisions of the broadcast media law and regulations, but recently grossly interfered with the process of electing the general director of the Azerbaijani public service broadcaster Ictimai TV by hosting and actually moderating the election process instead of Ictimai TV's Broadcasting Council.

³⁹ bit.ly/1aJZ2NO

Chapter Five: An NGO 'Witch Hunt'

(...) to re-examine and amend, at the latest within one year of its accession, the rules governing registration of associations and appeals procedures;

Opinion 222 (2000), paragraph IV h

Local and international NGOs working on democracy and human rights in Azerbaijan are increasingly becoming the targets of government interference. This can take the form of harassment, or more seriously, of legal pressure. Critical NGOs face particular difficulty when attempting to register as official legal entities, often being repeatedly denied registration on claims of minor technical problems with their applications.⁴⁰ As many as 1,000 NGOs are estimated to remain unregistered in Azerbaijan. Amendments to the NGO law in 2009, followed by a governmental decree in March 2011, required NGOs to register their grants with the Ministry of Justice before implementing the funded activities, and made it more difficult for foreign and international NGOs to establish branches in the country.

The Azerbaijan Human Rights House was ordered to cease operations, without warning and despite the fact that the NGO had complied with all relevant legal requirements. The Baku office of the National Democratic Institute was also shut down several times for not having registration, despite the fact that it had applied for registration several times from 2006.

On 11 March 2013, President Ilham Aliyev approved the amendments⁴¹ adopted by the Azerbaijani Parliament to the Law on Grants and the Law on Non-Governmental Organizations by a majority vote. They stipulate that NGOs receiving donations in any form of a value greater than 200 AZN (approximately 255 USD or 190 EUR) without a formal agreement could face massive fines and confiscation of property.

The already alarming freedom of expression situation in the country became even direr when Presidential Administration Head Ramiz Mehdiyev gave an interview to state media outlets, accusing foreign donors of "unlawfully" financing Azerbaijani NGOs. IRFS believes that these comments, along with other recent worrisome actions, indicate the government is setting the stage for a larger move against independent NGOs by claiming they are part of a foreign plot to destabilize the country. Mehdiyev's

⁴⁰ International Partnership Group for Azerbaijan, *Running Scared: Azerbaijan's Silenced Voices*, March 2012, pp. 27-28. Available at <http://bit.ly/QLHoPi>

⁴¹ bit.ly/10zUraz

“landmark” anti-NGO speech certainly raised to new heights the level of hostility towards the West and towards the ruling regime’s domestic opponents.

Mehdiyev’s speech followed President Aliyev signing into law regressive legislation that will minutely regulate NGO activities, management and finances, severely restricting their operations and making it easy to harass or close them down on technical grounds if the authorities dislike their activities.

In response, the European Parliament issued a resolution on Azerbaijan, called ‘The case of Ilgar Mammadov,’⁴² in which the body expressed its concern over the government’s tightening of regulations governing the funding of non-governmental organizations (NGOs) and urged the Azerbaijani authorities to grant the Azerbaijan Human Rights House unconditional authorization to re-open, and to register the Election Monitoring and Democracy Studies Center and the Human Rights Club without further delays or administrative burdens.



Human Rights House Azerbaijan, partner of the international Human Rights House Network, was forced to cease all its activities following an order of the Ministry of Justice of the Republic of Azerbaijan of 10 March 2011.

Photo: Akhmed Mukhtarov

⁴² <http://bit.ly/1d810Yz>

Part Two:

Keeping PACE with rights abuses



Ogtay Asadov, Speaker of Parliament of Azerbaijan (on the left) and Lluís Maria de Puig, President of the Parliamentary Assembly. European Conference of Presidents of Parliament, 5/22/08. Photo: www.coe.int

The Assembly may penalize persistent failure to honor obligations and commitments accepted, and lack of co-operation in its monitoring process, by adopting a resolution and/or a recommendation, by the non-ratification of the credentials of a national parliamentary delegation at the beginning of its next ordinary session or by the annulment of ratified credentials in the course of the same ordinary session in accordance with Rule 6 of the Rules of Procedure. Should the member state continue not to respect its commitments, the Assembly may address a recommendation to the Committee of Ministers requesting it to take the appropriate action in accordance with Articles 8 and 9 of the Statute of the Council of Europe.

Resolution 1115 (1997)⁴³Setting up of an Assembly committee on the honoring of obligations and commitments by member states of the Council of Europe (Monitoring Committee), point 12

⁴³ <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta97/ERES1115.htm>

When Azerbaijan joined the Council of Europe on 25 January 2001, it agreed not only to honor the obligations incumbent on all member states under Article 3 of the Organization's Statute, but also a number of specific commitments, set out in Opinion No. 222 (2000) on Azerbaijan's application for membership of the Council of Europe. In addition, Azerbaijan is bound by the European Convention on Human Rights and international law to respect and protect the rights to freedom of expression, freedom of assembly and association. In reality, the Azerbaijani authorities have failed to fulfill these commitments, and frequently violate these rights.

In Resolution 1031 (1994),⁴⁴ the Assembly observed "that all member States of the Council of Europe are required to respect their obligations under the Statute, the ECHR and all other Conventions to which they are parties. In the same resolution, the Assembly warned that "persistent failure to honor commitments freely entered into will have consequences [...]. For this purpose, the Assembly could use the relevant provisions of the Council of Europe's Statute and of its own Rules of Procedure."

The Assembly has since then extended and strengthened its monitoring procedure. In April 1995, by Order No. 508 (1995)⁴⁵ on the honoring of obligations and commitments by member States of the Council of Europe, the Assembly instructed its Committee on Legal Affairs and Human Rights (for reporting) and its Political Affairs Committee (for opinion) to continue monitoring closely the honoring of obligations and commitments in all member States concerned, and to report directly to the Assembly.

The Monitoring Committee is responsible for verifying the fulfillment of the obligations assumed by the member states under the terms of the Council of Europe Statute,⁴⁶ the European Convention on Human Rights⁴⁷ and all other Council of Europe conventions to which they are party, as well as the honoring of the commitments entered into by the authorities of member states upon their accession to the Council of Europe.

Since its first resolution on Azerbaijan, the Assembly has repeatedly called on Azerbaijan to ensure fundamental rights and freedoms, while the Aliyev regime has continued to deny the existence of such problems. In accordance with the monitoring procedure, as set out in Resolution 1115 (1997) and amended by Resolutions 1431 (2005) and 1515 (2006), the Assembly assessed the progress made by Azerbaijan in the fulfillment of its obligations and commitments in Resolutions 1305 (2002) and 1545 (2007) on the honoring of obligations and commitments by Azerbaijan and in Resolutions 1358 (2004), 1398 (2004), 1456 (2005), 1614 (2008), 1750 (2010), and 1917 (2013) on the functioning of democratic institutions in Azerbaijan.

This section looks into the work of the Committee on the Honoring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee),⁴⁸ and examines relevant PACE resolutions and the status of their implementation.

⁴⁴ Text adopted by the Assembly on 26 April 1995. This order superseded Order No. 488 (1993) and Resolution 1031 (1994).

⁴⁵ In 1997, the Assembly closed the monitoring procedure as regards Estonia (see Resolution 1117 and Recommendation 1313) and Romania (see Resolution 1123 and Recommendation 1326) in accordance with Order No. 508 (1995).

⁴⁶ <http://bit.ly/19A9FAU>

⁴⁷ <http://bit.ly/ZsNzNM>

⁴⁸ <http://bit.ly/1d1oYVo>

Chapter One:

“There can be no political prisoners in any member state of the Council of Europe”



Malcolm Bruce
Photo: www.coe.int

(...) to release or to grant a new trial to those prisoners who are regarded as “political prisoners” by human rights protection organizations, especially Mr Iskander Gamidov, Mr Alikram Gumbatov and Mr Raqim Gaziyeu;

paragraph 14.iv.b of Opinion No. 222 (2000)

“The problem that we face is clear: first, there can be no political prisoners in Council of Europe member states; secondly, Azerbaijan is a member of the Council of Europe; and thirdly, there are political prisoners in Azerbaijan. There are not fifty different ways of resolving the contradiction: the only way is to release the political prisoners.”

Sundergaard, Denmark⁴⁹

“Should the conditions not be met by 21 January 2002, postponement of the debate would not be a viable alternative, and appropriate means of political pressure will have to be brought to bear in the face of the insufficient political will shown by the Azerbaijani authorities, including the parliamentary delegation of Azerbaijan to the Parliamentary Assembly of the Council of Europe.”

Rapporteur Georges CLERFAYT Belgium, Liberal, Democratic and Reformers' Group, Committee on Legal Affairs and Human Rights report “Political prisoners in Azerbaijan”, Doc 9310, 11 January 2002⁵⁰

⁴⁹ PACE January 27 2004 session, second sitting, p.5 Azerbaijan: Joint Debate. <http://assembly.coe.int/Main.asp?link=/Documents/Records/2004/E/0401271000E.htm>

⁵⁰ Doc 9310, available at <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=9588&Language=EN>

The Assembly is obliged to observe that if there is no solution to the problem of the political prisoners by the Assembly's autumn 2004 part-session, Azerbaijan's presence within the Council of Europe will have reached a critical stage.

Resolution 1359 (2004), p. 16 ⁵¹

The Council of Europe had conditioned Azerbaijan's admission on, inter alia, guarantee of the "release or new, fair trial" for scores of political prisoners. The Azerbaijani authorities have unequivocally failed to implement this requirement. More than 12 years after accession, there are more than 100 political prisoners in Azerbaijan, according to the Baku-based watchdog Human Rights Club, with 14 from that list recognized as "prisoners of conscience" by Amnesty International.⁵²

The issue of political prisoners has always been the subject of heated debate at the Assembly. Since Azerbaijan's accession, 13 resolutions have been adopted, but none of them implemented by Azerbaijan under the ruling Yeni Azerbaijan party.

Definition of a "political prisoner"

Generally speaking, a political prisoner is someone imprisoned for politically motivated reasons.

Some people, including Azerbaijani members of the Assembly, interpret the term "political prisoner" narrowly, often confusing it with "prisoner of conscience" (POC), a term coined by Peter Benenson in a 28 May 1961 article («The Forgotten Prisoners») for the London *Observer* newspaper.

In 2001, in the context of the post-accession monitoring procedures with respect to Armenia and Azerbaijan, the Council of Europe Secretary General referred the cases of alleged political prisoners to a group of independent experts, mandated to prepare "a confidential opinion on the said cases indicating whether the persons in question may be defined as political prisoners on the basis of objective criteria in the light of the case-law of the European Court of Human Rights and Council of Europe standards."

Below is the *objective criteria* by which detained persons could be classified as political prisoners, set by Council of Europe-appointed independent experts (adopted on 3 May 2001):

⁵¹ Resolution 1359 (2004) <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17179&lang=EN>

⁵² <http://bit.ly/11Ujwjt>

A person deprived of his or her personal liberty is to be regarded as a “political prisoner:”

- a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;
- b. if the detention has been imposed for purely political reasons without connection to any offence;
- c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;
- d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,
- e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities.

**Cases of alleged political prisoners in Armenia and Azerbaijan”-
Report of the Independent Experts, Messrs Stefan Trechsel,
Evert Alkema and Alexander Arabadjiev⁵³**

First anniversary in the Council of Europe with some 500 political prisoners

Azerbaijan's first year in the Council of Europe family was marked with harassment of opposition parties, and intimidation of independent media and any other form of dissent, that went hand in hand with a score of human rights concessions to placate the Council of Europe. In January 2001, the PACE Committee on Legal Affairs and Human Rights was seized with a motion for a recommendation (Doc 8919) renewing the concern of many members of the Assembly about the fate of political prisoners in Azerbaijan.

⁵³ SG/Inf (2001)34,24 October 2001, Cases of alleged political prisoners in Armenia and Azerbaijan, II. Determination of objective criteria to identify “political prisoners” in Armenia and Azerbaijan, available at <https://wcd.coe.int/ViewDoc.jsp?id=232757&Site=COE>

In February 2001, the Secretary General of the Council of Europe, Walter Schwimmer, with the approval of the Committee of Ministers, instructed a group of independent experts to carry out an investigation concerning political prisoners in Armenia and Azerbaijan. The experts were Professor Stefan Trechsel of Zurich University former President of the European Commission of Human Rights; Professor Evert Alkema of Leiden University, extraordinary member of the Dutch Council of State and former member of the European Commission of Human Rights; and Alexander Arabadjiev, former Judge at the Constitutional Court of Bulgaria and former member of the European Commission of Human Rights.

On 17 August 2001, after the Council of Europe had presented the government with a confidential experts' report⁵⁴ on alleged political prisoners in Azerbaijan, President Heydar Aliyev pardoned 89 political prisoners, of whom 66 had been released and 23 had their sentences reduced.

The Committee of Ministers, in its declaration of 21 September 2001, welcomed the pardon but expressed the wish that the Azerbaijani authorities would go still further by marking the tenth anniversary of the independence of Azerbaijan on 18 October 2001 with a new gesture of reconciliation.

The Council of Europe Secretary General expressed concern over the crackdown on independent media and urged President Aliyev to release or grant a new trial to all political prisoners, which Azerbaijani NGOs numbered in the hundreds.

Rapporteur Georges Clerfayt, Belgium, Liberal, Democratic and Reformers' Group, wrote in his report *Political prisoners in Azerbaijan*,⁵⁵ presented to the Assembly in January 2002:

“It is clear that the Azerbaijani authorities have made an effort to meet the demands of the Council of Europe. Nonetheless (late December 2001) there must still be a probable minimum of 500 cases of alleged political prisoners remaining in prison, or at all events cases of prisoners for whom the nature, cause and circumstances of imprisonment, indeed their no doubt unjust fate, are of concern to the Council of Europe. These cases will have to be reviewed sooner or later”.

Clerfayt's report sparked debate within and outside Azerbaijan. In Strasbourg, Azerbaijan celebrated its first anniversary in the Council of Europe with the Assembly debate about Clerfayt's report on political prisoners, followed by the adoption of a resolution. As such, the January 2002 Assembly session (seventh sitting) adopted resolution 1272⁵⁶ which welcomed the release of “some 220 presumed political prisoners” and presidential pardons⁵⁷ of another “29 regarded as political prisoners by non-governmen-

⁵⁴ This report was made public in October 2001. See document SG/Inf (2001)34 <https://wcd.coe.int/ViewDoc.jsp?id=232757&Site=COE>

⁵⁵ <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=9588&Language=EN>

⁵⁶ Resolution 1272, 2002, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/ERES1272.htm>

⁵⁷ By 29 December 2001 decree of President of Azerbaijan, 57 prisoners were released.

tal organizations” but reiterated that “there can be no political prisoners in any member state of the Council of Europe.”

Traditionally, the Azerbaijani government refused to recognize the problem, accused the Assembly of being biased, and called Clerfayt’s report “unfair.” Incumbent President Ilham Aliyev, then a member of the Azerbaijani PACE delegation, expressed the Azerbaijani government’s opinion with harsh rhetoric:⁵⁸



Ilham Aliyev at PACE
Photo: www.coe.int

“The controversial report that has been presented today has already caused tension in Azerbaijani society. It does not help to ensure future co-operation between Azerbaijan and the Council of Europe and it may undermine the efforts of the government of Azerbaijan aimed at deeper integration into the European community. Taking all this into account, and also the fact that this controversial and unfair report and draft resolution lead not to co-operation but to confrontation, I ask my colleagues to vote against the draft resolution”.

Secretary General of the Council of Europe Schwimmer, usually a rare speaker in Assembly debates, could not refrain from commenting:⁵⁹



Walter Schwimmer.
Photo: cgdc.eu

“With my full authority as Secretary General of this Organisation, I appeal to the authorities of Azerbaijan fully to apply the conclusions of the independent experts. That means following the recommendations in the pilot cases and applying the same criteria to all other detainees whom the independent experts could not check themselves.

My confidence is in the authorities of a member country, but I repeat: one political prisoner in a member country of the Council of Europe is one too many. There should be no political prisoners, so please follow the recommendations of our independent experts.”

As a result of the debate, Resolution 1272⁶⁰ was adopted.

In the resolution, the Assembly reminds the Azerbaijani government of the rules of a fair hearing, as set out in the European Convention on Human Rights and clarified in case law of the European Court of Human Rights, to be complied with in every case. If persons are to be retried, as called for in Opinion No. 222 (2000), the judicial investigation must be re-started. “Furthermore, those accused shall have the

⁵⁸ *Assembly debate* on 24 January 2002 (7th Sitting), transcript is available at <http://www.assembly.coe.int/Main.asp?link=http://www.assembly.coe.int/Documents/Records/2002/e/0201241500e.htm#4t>

⁵⁹ Ibid

⁶⁰ Resolution 1272, 2002, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/ERES1272.htm>

right to the assistance of a defense counsel of their choice from the very start of the proceedings. Trials shall be public and freely accessible to observers from international organizations and NGOs," reads the resolution.



*Hilal Mammadov, a
journalist and human
rights defender, arrested on
dubious charges of narcotics
possession and treason.
Photo: Voice of America.*

Implementation update: This point of the resolution has never been properly implemented. One example is the trial of journalist and human rights defender Hilal Mammadov, arrested in 2012 and recognized as a prisoner of conscience by Amnesty International. He was included in the list of political prisoners prepared by the PACE co-rapporteur on political prisoners, Cristoph Strasser.⁶¹ A significant portion of Mammadov's trial took place behind closed doors. The court justified the closure of the trial by referring to Azerbaijan's criminal legislation, which stipulates trials that involve information considered to be state secrets must be closed to observers.⁶² It is also worth noting that Azerbaijani criminal law⁶³ provides for measures of restraint to be used on detainees in closed-door hearings.

According to Article 151 of the Constitution,⁶⁴ which is considered to be the prevalent law of the Azerbaijani Republic, in cases of conflict between Azerbaijani law and international agreements to which Azerbaijan has acceded, provisions of the international agreements will prevail. However, despite the conflict between Azerbaijani law and international agreements in this case, provisions of the international agreements have not been applied. Furthermore, local NGOs have regularly been prevented from monitoring trials, as was the case with the trials of journalists Nijat Aliyev and Hilal Mammadov, when NGO representatives were denied entrance to the courtroom due to an alleged shortage of seating.

The Assembly concludes that it "resolves to hold information debates on the presumed political prisoners in Azerbaijan, and to offer interested media outlets the opportunity to broadcast these on television and radio throughout the country."

Implementation update: This recommendation has never been implemented. As traditional television and radio channels are under state control in Azerbaijan, they do not cover any issues related to debates about political prisoners. Even the term "alleged political prisoner" is under a strict ban. The political prisoner topic has been mentioned only once; after the Assembly voted down

⁶¹ <http://bit.ly/17N7MRS>

⁶² Article 200.4, Criminal Procedure Code of the Azerbaijan Republic, bit.ly/17Q7fL5

⁶³ Ibid

⁶⁴ <http://en.president.az/azerbaijan/constitution/>

the resolution drawn from Strasser's report on political prisoners⁶⁵ during the January 2013 PACE session, the state television of Azerbaijan (AZTV) broadcast a news story from the debate,⁶⁶ showing only anti-Strasser and pro-Azerbaijani speeches and comments from PACE members.

Azerbaijan's presence at the Council of Europe at a "critical stage"

By the time Ilham Aliyev inherited power from his father, late president Heydar Aliyev, in October 2003, Azerbaijan already had a long list of persons imprisoned for political reasons. The Council of Europe and other international organizations had demanded their release. Council of Europe experts had been severely critical of the trials of political prisoners, describing three re-trials of well-known political prisoners (former Interior Minister Iskender Hamidov; former Defense Minister Rahim Gaziyeu; and Alikram Humbatov, an ethnic Talysh former militia leader) as a "sham" controlled by the authorities rather than the judiciary.⁶⁷ Hope remained, however that Aliyev would immediately address the issues of political prisoners in Azerbaijan:

"I hope that the new President, despite the circumstances in which he was elected, will demonstrate a genuine good will and will take Azerbaijan towards a pluralist democracy, recognizing that the first and prime step to convince the Assembly of his good faith and sincerity will be to release the political prisoners identified in the report."

Bruce, UK, 27 January 2004, second sitting⁶⁸

These hopes were never realized. By January 2004, more than 100 critics of Ilham Aliyev and his regime remained in detention, their relatives had been fired from their jobs in retaliation for their political affiliation and activities, and opposition activists throughout Azerbaijan were facing constant police harassment.⁶⁹

⁶⁵ <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19317&lang=EN>

⁶⁶ 2013 Ordinary session, Sixth sitting report available at <http://assembly.coe.int/Main.asp?link=/Documents/Records/2013/E/1301231530E.htm>

⁶⁷ Committee on Legal Affairs and Human Rights, Political Prisoners in Azerbaijan, June 6, 2003, Doc. 9826; PACE Opinion No. 222 (2000); PACE Resolution 1272 (2002)

⁶⁸ Assembly January 27 2004 session, second sitting, p.5 Azerbaijan: Joint Debate. <http://assembly.coe.int/Main.asp?link=/Documents/Records/2004/E/0401271000E.htm>

⁶⁹ *Crushing Dissent*, Human Rights Watch report <http://www.hrw.org/node/12183/section/7>

The Assembly responded with a harsh resolution (1359),⁷⁰ with a deadline for resolution of the problem of political prisoners put before the new president of Azerbaijan:

“The Assembly is obliged to observe that if there is no solution to the problem of the political prisoners by the Assembly’s autumn 2004 part-session, Azerbaijan’s presence within the Council of Europe will have reached a critical stage.”

“It was necessary for the Azeri authorities to demonstrate their commitment to respecting their obligations to the Council of Europe and to becoming part of our European family. A long time has passed, and we heard many words, but there have been few real deeds. That is why the Committee on Legal Affairs and Human Rights decided to stipulate the term in which Azerbaijan should fulfil our request to release political prisoners. That period ends with the September part-session. Then, Azerbaijan’s membership will be at a critical stage.

The existence of political prisoners is clearly incompatible with European standards and membership of the Council of Europe. There can be no exception to that principle. Political opponents can be criticised, but they should not be persecuted and put in prison.”

Toshev (*Bulgaria*)⁷¹

Was the condition met?

Five months after the deadline set in the above-mentioned Resolution 1359 (2004), the Assembly again had to discuss the situation of political prisoners in Azerbaijan.

On the afternoon of 22 June 2004, the Assembly debated, among other Azerbaijan-related issues, the report⁷² of the Committee on Legal Affairs and Human Rights on follow-up to Resolution 1359 (2004) on political prisoners in Azerbaijan, Document 10564.

The report, prepared by Rapporteur Malcolm Bruce, United Kingdom, Liberal, Democratic and Reformers’ Group, mentions several positive steps since the last resolution such as pardon decrees signed by

⁷⁰ Resolution 1359, 2004, Political Prisoners in Azerbaijan <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17179&lang=EN>

⁷¹ *Assembly debate* on 24 January 2002 (7th Sitting), transcript is available at <http://www.assembly.coe.int/Main.asp?link=http://www.assembly.coe.int/Documents/Records/2002/e/0201241500e.htm#4t>

⁷² Document 10564, report, Follow-up to Resolution 1359 (2004) on political prisoners in Azerbaijan, available at <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=10908&Language=EN>

President Aliyev, and establishment of a task force, comprised of human rights organizations and state authorities, to work conclusively on the remaining list.

“The issue of political prisoners has been a longstanding bone of contention. I hope, and believe, that that is now close to resolution, although it is not finally resolved,” said Bruce while presenting his report.

Bruce thanked the Azerbaijani delegation for their cooperation, particularly noting “their determination to resolve the problem, and their shared frustration when we did not always make the progress that we had hoped for.”

“Obviously, some people in Azerbaijan are now asking me: Can we now close the book on political prisoners in Azerbaijan? I want to close that book, and we are closer to that point than I thought, six months or even longer ago, that we would be.”

Bruce sounded very positive, and indeed since Resolution 1359 (2004) was adopted, President Aliyev had signed six pardon decrees: on 17 March, 10 May, 3 September and 29 December 2004, and 20 March and 20 June 2005. The authorities had permitted the release of 52 political prisoners and 93 presumed political prisoners, including three high-ranking political figures – former Prime Minister Suret Huseynov, former Defense Minister Raqim Gaziyeu, and Alikram Gumbatov – and seven leading members of the political opposition.

The tone of the resolution, later referred as to 1457 (2005),⁷³ drawn from Bruce’s report and adopted by the Assembly, is more encouraging than harsh. “The Assembly resolutely reaffirms its position of principle that detainees recognized as political prisoners must be released. It calls on the Azerbaijani authorities to find a speedy and permanent solution to the issue of political prisoners and presumed political prisoners,” reads the resolution.

This was the first time when the Assembly put a firm deadline before Azerbaijan, and somehow, it worked. The Assembly’s serious stance on political prisoners helped to achieve some progress. However, the question still remained whether Azerbaijan would be able to guarantee a long-term solution to the problem of political prisoners.

⁷³ Resolution 1457 (2005) <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1457.htm>

Chapter Two: “We should give a chance to a new president”

The Parliamentary Assembly believes that the newly-elected President must be given an opportunity to demonstrate his commitment to European democratic values and principles. As the former president of the Azerbaijani delegation to the Assembly, Mr Ilham Aliyev is familiar with the obligations resulting from his country's membership of the Council of Europe. The Assembly therefore hopes that he will speedily initiate the necessary reforms in the field of pluralistic democracy, rule of law and respect for human rights.

Resolution 1358, point 2

“Azerbaijan's membership of the Council of Europe is under discussion. This is not an easy discussion for us and we hear some criticism. I know that some members of the Council of Europe believe that what is happening in Azerbaijan is unacceptable. However, I believe that Azerbaijan will be a member of this organisation not just for a year but for ever. (...)The current President of Azerbaijan, Mr Ilham Aliyev, will demonstrate my country's political will in the near future. Azerbaijan will become a modern, democratic and civilized nation like all other European countries.”

Seyidov, Azerbaijan⁷⁴

“History shows us that when a former member of this Assembly has become president or prime minister of a country, the experience in the Council of Europe has yielded positive results there. Let us hope that that will be the case with Mr Aliyev. I know that it is hard to change mentalities and to build democracy-- democracy does not come cheap; but there is no alternative.”

Frundea, Romania⁷⁵

⁷⁴ Assembly January 27 2004 session, second sitting, p.5 Azerbaijan: Joint Debate. <http://assembly.coe.int/Main.asp?link=/Documents/Records/2004/E/0401271000E.htm>

⁷⁵ Ibid

Rights crackdown in the wake of the 2003 presidential election

Azerbaijan's government unleashed a massive crackdown on the political opposition in the wake of the October 2003 presidential election, which was widely condemned by the international community as fraudulent.

The Assembly could not tolerate hundreds of arbitrary arrests, widespread beatings and torture, and politically motivated job dismissals of members and supporters of the opposition following the election. The Monitoring Committee's report, prepared by co-rapporteurs Gross and Casañ,⁷⁶ was put to the Assembly for discussion in its second sitting⁷⁷ on 27 January 2004. With scores of human rights abuses documented in the co-rapporteurs' report and the harsh tone of the draft resolution, the Assembly was preparing for a serious debate about Azerbaijan's compliance with the organization's human rights requirements.



Violent clash: Azerbaijani riot police beat a man during a protest in 2003 after the rigged election which saw Ilham Aliyev declared the winner.

Photo: Reuters

The presidential elections in October 2003 again failed to meet international standards. The constitutional arrangements regarding the separation of powers are inadequate and are favouring the executive power. During the last year, freedom of expression and freedom of association have not improved and, in some cases, deteriorated. Human rights abuses by the police and the use of torture and ill treatment of detainees continue to be reported. While all political prisoners have not yet been released, the events after the presidential elections led to further politically motivated arrests.

From the Monitoring Committee report, Gross and Casañ,⁷⁸ 14 January 2004

The election of the new president could not be challenged, but it was still questionable, declared Gross when presenting the Monitoring Committee's report on the functioning of democratic institutions in Azerbaijan during the Assembly's debate on 27 January 2004.⁷⁹ Gross said he had hoped the new presi-

⁷⁶ Doc. 10030, 12 January 2004, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Gross and Mr Martínez Casañ <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=10389&Language=en>

⁷⁷ Assembly January 27 session, second sitting, p.5 Azerbaijan: Joint Debate. <http://assembly.coe.int/Main.asp?link=/Documents/Records/2004/E/0401271000E.htm>

⁷⁸ Doc. 10030, 12 January 2004, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Gross and Mr Martínez Casañ <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=10389&Language=en>

⁷⁹ Assembly January 27 session, second sitting, p.5, Azerbaijan: Joint Debate. <http://assembly.coe.int/Main.asp?link=/Documents/Records/2004/E/0401271000E.htm>

dent would do more to fulfill his commitments in terms of democracy. He was disappointed that democracy in Azerbaijan was failing. Gross suggested the new government would be given time until April or May 2004 to improve. Otherwise, Azerbaijan's three-year membership in the Council of Europe should be questioned, he stated.⁸⁰

Some Assembly members agreed with Gross: "Azerbaijan should be given three months in which to improve, but if it did not, its continued membership would undermine the Council of Europe," said Kucheida, from France. Kucheida and others said that if there was no solution to the problem of political prisoners and human rights, Azerbaijan's presence within the Council of Europe was reaching a critical stage.

"(...) freedom of expression has been curtailed, freedom of association causes serious concern, freedom of peaceful assembly suffers unacceptable restrictions, violations of basic human rights by law enforcement bodies are still taking place and the torture of detainees continues -- all that by a country that has ratified the Convention.

Let there be no wavering in the principles that are the pillars of the Council of Europe. Its credibility and reputation are of immense political and ethical value. That credibility and reputation must be defended and protected, and they must retain their relevance."

Caccia (Canada)

With progress being "far from the satisfactory," a new president is given a "chance"

"As a number of colleagues have said, the country has a new president. He is a young man who was a member here at the Council of Europe. Of course, we should be vigilant and watch what is done under his leadership, but we should give him a chance," said Kirilov (Bulgaria) during debate.

The "chance" was given in Resolution 1358 (2004)⁸¹ on the functioning of democratic institutions in Azerbaijan, the relatively harshest resolution since the country joined the Council of Europe. If it had been implemented, this resolution could have become a defining point in the history of relations between Azerbaijan and the Council of Europe. Unfortunately, the resolution not only turned into yet another of a series of eight PACE resolutions on Azerbaijan, but also into a symbol of disrespect to the Council of Europe's values, a reminder of the Council of Europe's failure to stand for its core principles.

⁸⁰ Ibid

⁸¹ Resolution 1358 (2004), Functioning of democratic institutions in Azerbaijan <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta04/ERES1358.htm>

The resolution, pointed to the progress being “far from satisfactory,” and called on the new government to act on the Assembly’s recommendations. The Assembly condemned any “authoritarian practices” and called them “unacceptable:”

(...) that 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 again observed during the 2003 elections. In a member state of the Council of Europe, which has been independent for more than ten years, such practice is unacceptable.

Resolution 1358, point 6.II

The tone of the resolution became particularly harsh when it came to fundamental freedoms. Almost each point of the resolution contained strong wording such as “extremely weakened,” “not fulfilled,” “failed,” “further curtailed,” “none of the recommendations taken into consideration,” “systematically undermined,” “serious concern,” “repeated and unacceptable restrictions,” “unacceptable,” “obvious lack of democratic opportunities,” “unsuitable and disproportionate,” and “the Assembly cannot accept.” For example, the resolution read: “The Assembly considers that the situation concerning this basic freedom has not improved as one would have expected from a country which has been a member of the Council of Europe for more than two years.”

Instead of properly implementing Resolution 1305 (2002),⁸² the Azerbaijani authorities responded with a crackdown on freedom of expression. None of the recommendations contained in Resolution 1305 (2002) were taken into consideration, the document reads. In terms of media freedom, the resolution mentions “the numerous problems concerning the media,” “undeniable media bias in favour of the candidacy of the current President,”⁸³ failure to transform state channels into “truly independent public service broadcasting,” systematic violations of “voters’ basic right to freely express their choice,” “intimidation” of journalists by “the executive bodies,” and “administrative harassment” of non-state media.

After the resolution: Nothing changed in the year following the resolution. The Aliyev regime continued to enjoy impunity for its crackdown on Council of Europe values and the fundamental rights of the Azerbaijani people. The political climate remained hostile to the activity of independent and opposition media with two journalists kidnapped, one imprisoned, eight arrested, and six threatened or physically attacked⁸⁴ in the year following the resolution.

⁸² <http://bit.ly/1aynxA9>

⁸³ Azerbaijan’s presidential election, 2003

⁸⁴ Reporters Without Borders Annual Report, Azerbaijan 2005, <http://www.refworld.org/topic,50ffbce582,50ffbce5be,46e690dd23,0,RSF,ANNUALREPORT,AZE.html>

No bill or law was passed to ensure or improve protection of NGOs, media, and activists, as was urged in the resolution, which called on the authorities “to take measures and, if necessary, legislate in order to protect the media, NGOs, political activists or their relatives from intimidation and harassment by the authorities.” Instead, the government unleashed a war against human rights defenders, critical NGO and media. Take the case of harassment of Ilgar Ibrahimoglu, the head of the Center for the Protection of Conscience and Religious Freedom and a government critic, whom the authorities tried for alleged involvement in post-election violence. In April 2004, Ibrahimoglu was given a five-year suspended sentence for “participation in disturbing the public peace and resisting the authorities” in the electoral context, despite serious allegations that the charges were falsified.⁸⁵

According to the resolution, freedom of association and freedom of assembly were both causes for “serious concern.” The resolution pointed to “the numerous restrictions on freedom of association and obstacles to the implementation of citizens’ rights to associate,” and “repeated and unacceptable restrictions, and impediments to the right to campaign.” The resolution concluded that the situation concerning fundamental freedoms had not improved as one would have expected from a country which had been a member of the Council of Europe for more than two years.

Just like with the resolution on political prisoners adopted on the same day (see the previous chapter), the Assembly put a condition before the new president of Azerbaijan: **If no progress is recorded by June 2004, the Assembly may be requested to reconsider the ratification of the Azerbaijani parliamentary delegation to the Council of Europe.**⁸⁶

⁸⁵ <http://bit.ly/188otcz>

⁸⁶ In conformity with Article 12 of Resolution 1115 (1997) and Rule 9 of its Rules of Procedure.

Chapter Three: “Too much tension in the state machinery”

On 1 March 2004, a Baku court ordered the evacuation of the Juma Mosque, that authorities had long considered a hotbed of anti-government activity.⁸⁷ In June 2004, police forcefully evicted worshippers from the mosque, detaining several of them. On 30 July 2004, police prevented the community from meeting at a private house, raiding the premises and temporarily detaining all 26 members present.⁸⁸

The government said the demand to vacate the Juma mosque was legal. The crackdown on the Juma mosque was part of President Ilham Aliyev's drive against all forms of dissent, be it religious or political, argued independent civil society representatives.

What would the Council of Europe say? The last resolution put a clear condition before the government: *If no progress is recorded by June 2004, the Assembly may be requested to reconsider the ratification of the credentials of the Azerbaijani parliamentary delegation to the Council of Europe.*⁸⁹

President Aliyev is “on the right track;” his administration is the problem

In order to take stock of the measures the authorities had taken in response to the Assembly's requests put in Resolution 1358 (2004),⁹⁰ Andreas Gross visited Azerbaijan on 19 and 20 May 2004, and the co-rapporteurs traveled there from 3 to 9 August 2004, after Andres Herkel was appointed.

Following the visits, the rapporteurs come to the following conclusion:

Azerbaijan is again, almost a year after the 2003 presidential election, at a cross-roads between a democratic European future and the more sombre prospects

⁸⁷ <http://www.rferl.org/content/article/1051756.html>

⁸⁸ Human Rights Watch World report, Azerbaijan <http://www.refworld.org/docid/421da30d2.html>

⁸⁹ In conformity with Article 12 of Resolution 1115 (1997) and Rule 9 of its Rules of Procedure.

⁹⁰ Resolution 1358 (2004), Functioning of democratic institutions in Azerbaijan <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta04/ERES1358.htm>



Ramiz Mehdiyev,
Head of the Administration
of the President of the
Republic of Azerbaijan
Photo: www.publika.az

of a government with an authoritarian tendency oriented towards the CIS and Russia. Knowing the country's new President, the co-rapporteurs understand that he and his Cabinet will be implementing a pro-European policy of national independence. According to the co-rapporteurs, the President is on the right track, but they are not sure that the whole government and particularly the administration share the same object.

Monitoring Committee report, Co-Rapporteurs: Andreas Gross, Switzerland, Socialist Group, and Andres Herkel, Estonia, Group of the European People's Party⁹¹

The rapporteurs mentioned tensions within the government that did not allow for the reforms to "progress as quickly as might have wished the President." In the meantime, they acknowledged that "fundamental work has already been completed" and expressed no doubt that "the goodwill is there to progress towards Europe."

The report somehow justified poor implementation or misinterpretation of the laws due to "too much tension in the state machinery," and electoral fraud due to "the incompetence and poor training of election officials."

While the rapporteurs acknowledged that Azerbaijan had not put into practice everything demanded by the January 2004 resolution, they still mentioned a "determined will" to implement Council of Europe commitments, but "through its own means and at its own speed."

According to the rapporteurs, there was no need for any sanction against Azerbaijan, and namely, reconsideration of the credentials of the Azerbaijani delegation was mentioned in the last resolution.⁹² The co-rapporteurs concluded:

This is something that the co-rapporteurs felt sufficiently strongly to refrain from calling for action by the Assembly vis-à-vis the parliamentary delegation. There is, what is more, no longer any reason to make this demand, for parliament's role must be strengthened before any penalty against it could have any effect other than symbolic.⁹³

⁹¹ Doc. 10285, 20 September 2004, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) Co-Rapporteurs: Mr Andreas Gross, Switzerland, Socialist Group, and Mr Andres Herkel, Estonia, Group of the European People's Party <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=10645&Language=en>

⁹² Resolution 1358 (2004) Functioning of democratic institutions in Azerbaijan <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta04/ERES1358.htm>

⁹³ Doc. 10285, 20 September 2004, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) Co-Rapporteurs: Mr Andreas Gross, Switzerland, Socialist Group, and Mr Andres Herkel, Estonia, Group of the European People's Party <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=10645&Language=en>

Thus, Resolution 1398 (2004)⁹⁴ was adopted in the 27th sitting on 5 October 2004 during the Assembly debate around the report submitted by Gross and Herkel.

Interestingly, the co-rapporteurs took a tougher stance in their speeches than in the report:

“I should like to emphasize some additional aspects that are important if we want to guarantee the democratic development of the country and to create the preconditions of pluralistic democracy. The first aspect is a free media. That does not exist in a proper way. There are repressive measures against journalists. Worryingly, the situation seems to be worse than it was before. At the end of July, the well-known organization *Reporters Sans Frontieres* made an appeal concerning the harassment of journalists. That is described in the explanatory memorandum.”

Andres Herkel, co-rapporteur, Assembly debate on 5 October 2004 (27th Sitting)⁹⁵

27th Sitting, debate⁹⁶ on the report on the implementation of Resolution 1358 (2004) on the functioning of democratic institutions in Azerbaijan.

“Too many people are imprisoned for no reason and this is important that laws and obligations must not just be signed and adopted in the parliament, but implemented in the society. As long as any one person is afraid of speaking out and saying that he does not agree with the government because he will be punished that is one person too many. In the next municipal elections, we want people in all cities and regions to discuss politics and we do not want the government and the police to harass anyone who does not share the opinion of the government.”

Andreas Gross, co-rapporteur, Assembly debate on 5 October 2004 (27th Sitting)⁹⁷

The Azerbaijani delegation, however, continued to paint a rosy picture of progress, and deny the existence of political prisoners:

“We owe thanks to the Council of Europe, which has built durable, sustainable, reliable bridges in the form of common values, respect for human rights, for the rule of law and for human dignity. Those have become a reality in the South Caucasus region. Azerbaijan provides an obvious example of that. Since my coun-

⁹⁴ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta04/ERES1398.htm>

⁹⁵ Full transcript of the debate is available at <http://assembly.coe.int/Main.asp?link=/Documents/Records/2004/E/0410051500E.htm>

⁹⁶ Ibid

⁹⁷ Ibid

try's accession to the Council of Europe, it has made progress in respecting its obligations and commitments. Many serious and decisive steps have been taken in the protection of human rights, the guaranteeing of freedom of expression, and improvement in conditions of detention. The problem of so-called political prisoners is on the eve of its resolution."

Gultakin Hajiyeva, Azerbaijan, Assembly debate on 5 October 2004 (27th sitting)⁹⁸

"Good climate of cooperation"

As was seen both in the debate⁹⁹ and the text of Resolution 1398, the majority of PACE members expressed optimism about Ilham Aliyev's presidency and his pro-European agenda: "Since Mr Ilham Aliyev was elected President of the Republic of Azerbaijan in October 2003, the new government has embarked on a series of domestic reforms that are essential if Azerbaijan is fully to honor its obligations and commitments as a Council of Europe member state", read the resolution. The PACE "particularly welcomes the good climate of co-operation and trust that prevails between the Assembly and the Azerbaijani authorities."

The Assembly, however, remained "concerned" that freedom of expression, freedom of association, and freedom of assembly were not guaranteed in practice.

The resolution mentioned with concern "fourteen political prisoners" and "174 other alleged political prisoners," and that "the question of political prisoners has still not been satisfactorily and definitively resolved." The Assembly reiterated its call on the Azerbaijani authorities to "finally settle the problem of political prisoners and alleged political prisoners" and "to immediately release the fourteen political prisoners still in prison, given that the retrials received by most of them were not carried out entirely according to the norms and principles of the Council of Europe."

Implementation update: In 2012, German Social Democrat Christoph Strasser drew up a list of 85 alleged political prisoners in Azerbaijan. On 23 January 2013, in an addendum to the list, Strasser said 35 of the people on the initial list had since been released.

With regard to freedom of the media, the Assembly expressed its hope that the independent media in Azerbaijan would resume their activities "without being constantly threatened with being gagged or ha-

⁹⁸ Ibid

⁹⁹ Ibid

passed,” and requested the Azerbaijani authorities to take all steps needed to allow the press to operate independently.

After the resolution: Less than six months after the adoption of the resolution, on 2 March 2005, *Monitor* magazine editor-in-chief **Elmar Huseynov** was murdered in a well-organized attack that appeared to be a contract-style killing. After receiving a number of death threats, he was gunned down in the stairwell of his apartment building in Baku, where he died on the scene. More than eight years later, the authorities have failed to adequately investigate this case and no one has been brought to justice for the attack. Huseynov was well known as a hard-hitting investigative journalist who was highly critical of the authorities. His case has become deeply symbolic, reminding the Azerbaijani media community of the courage needed to pursue investigative journalism and of the inherent risks associated with this work.

The Assembly “welcomed” the adoption of the Law on Public Broadcasting Service and called on the Azerbaijani authorities to fully implement the provisions of that law in practice. “Establishing a public television service is indispensable for all democracies, especially if the aim is to ensure real pluralism. The propagation of biased news programs should be avoided,” read the resolution.

Implementation update: Today, the most controlled segment of the Azerbaijani media remains television and radio broadcasting. Despite the fact that the law regulating television and radio broadcasting does exist, there are problems with its implementation. While the NTRC is meant to oversee the implementation of the law, it actually violates some of its principles.¹⁰⁰

Since its formation in 2005, the public service broadcaster, Ictimai TV, has essentially served the needs of the state, largely being used as a propaganda tool of the government with little or no independent reporting. Ictimai gives only brief – and often incorrect – information about significant events in the country, such as the activities of political parties or public associations. It often disseminates incorrect information about individuals and organizations, and refuses to grant them airtime to exercise their right to reply.

Ironically, following adoption of the resolution, half of which was devoted to freedom of expression, the authorities unleashed an unprecedented crackdown on that freedom.

¹⁰⁰ See <http://bit.ly/SZOGQC>



From left, then-Turkish President Ahmet Necdet Sezer, Georgian President Mikhail Saakashvili, Azerbaijan President Ilham Aliyev, Turkish Prime Minister Tayyip Erdogan and BP CEO John Browne after laying the last piece of a pipeline symbolically at the Ceyhan crude oil terminal near Turkey's southern coastal city of Adana July 13, 2006. Photo: Reuters/Fatih Saribas

Oil boom curse

Construction on two new major oil and gas pipelines routed across Azerbaijan, Georgia, and Turkey was almost completed. Line fill of the Baku-Tbilisi-Ceyhan (BTC) pipeline started on 10 May 2005, with first oil expected to reach the Ceyhan terminal in late May 2006.¹⁰¹ With oil prices skyrocketing, the hope was that the pipeline would bring consumers in the West a steady flow of oil while avoiding the usual risks. Two months before the first oil pumped through one of the longest oil routes in the world, a famous critic of the Aliyev regime, Elmar Huseynov was shot dead in his apartment building in Baku.

The outspoken editor-in-chief of the opposition magazine *Monitor*, Huseynov was shot seven times while walking out of a lift on 2 March 2005. Thought to be the victim of a contract killing, Huseynov's death is the most barbaric case in a continuing series of violence against journalists. His murder is ascribed to the political content of the newspaper, which closed following his death.

¹⁰¹ Timeline of notable BTC milestones and achievements, <http://www.bp.com/sectiongenericarticle.do?categoryId=9029481&contentId=7053999>

What would the Assembly say? The Assembly decided not to break with the tradition of justifying human rights abuses with internal tensions in the government.

At the 25th sitting of the Assembly, on 22 June 2005, Andreas Gross said when presenting the next Monitoring Committee report¹⁰² on the functioning of democratic institutions in Azerbaijan:

“A number of groups in Azerbaijan appeared to be seeking to undermine reform. There seemed to be a nervousness among elements of the ruling class. Some elements appeared to be establishing a hegemony which would secure wealth and political power. The Council of Europe had to encourage the government to ensure that the forthcoming elections were a reflection of the wishes of the majority of the people.”¹⁰³

According to Gross, a new team, “enthusiastic about reform,” had been formed around the president. Interestingly, here, the co-rapporteurs appeared to have different opinions on the state of fundamental freedoms in Azerbaijan.

While Gross said “there seemed to be a dialogue occurring between the government and the opposition” and mentioned this fact as one of the “hopeful signs,” Herkel expressed his “deep concern” over “the lack of political dialogue between the opposition and the authorities.”

Herkel acknowledged that although there were “good signs,” “many aspects are not dealt with in the proper time and that many things are not done.”

Presenting their joint report,¹⁰⁴ Gross said that the media had been “freed up” to allow the opposition to convey its messages. Herkel argued that freedom of expression remained of “deep concern.”

Both rapporteurs, however, agreed there was an improvement with regard to freedom of assembly. As such, both rapporteurs, along with other Assembly members welcomed the fact that two opposition demonstrations had been approved, and had taken place without violence.

However, there were still dangers. The danger, as seen by Herkel was that “a number of groups in Azerbaijan appeared to be seeking to undermine reform.” According to Herkel, there seemed to be “a nervousness among elements of the ruling class” and attempts, again by “some elements” to be establish a “hegemony which would secure wealth and political power.” Another threat, Herkel believed was oil: “The more oil that flowed in a state the less democratic it became.”

¹⁰² Document, 10569, Functioning of democratic institutions, 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 Andres Herkel, Estonia, Group of the European People's Party. <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=11124&Language=en>

¹⁰³ 25th sitting of the Assembly, 22 June 2005 <http://assembly.coe.int/Main.asp?link=/Documents/Records/2005/E/0506221500E.htm#5>

¹⁰⁴ Document, 10569, Functioning of democratic institutions, 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 Andres Herkel, Estonia, Group of the European People's Party. <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=11124&Language=en>

On that warm June day, there was no single mention of Elmar Huseynov's murder at the Assembly. Although the Monitoring Committee report,¹⁰⁵ prepared by Gross and Herkel and submitted on 3 June 2005, documented many shortcomings in the field of media freedom including a shocking murder, the Assembly remained silent. Parliamentarians rushed to give high marks to Aliyev's regime for "improvements to democracy, human rights and the primacy of law," "increased openness" of the Azerbaijani government and its "firm political will" to solve the issue of political prisoners, "positive development," "positive direction," "a strong commitment to European standards," and so on. Media freedom was not even mentioned.

Apparently, the huge foreign investment in the huge energy projects in Azerbaijan made the Assembly's attention focused on issues of security and stability in the region, at the expense of human rights.

At the end of the debate, Resolution 1456 (2005)¹⁰⁶ on the functioning of democratic institutions was adopted. The outrageous crime, the murder of Elmar Huseynov, only got a small mention in the resolution under point 14.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."

The resolution was primarily focused on the free and democratic election. The Assembly considered the upcoming parliamentary elections in November 2005 to be "a decisive test for the democratic credibility" of Azerbaijan.

There was therefore, the clear hope that the 2005 parliamentary elections in Azerbaijan would be the first to meet the standards of the Council of Europe. Would that hope for free and democratic elections in Azerbaijan come true?



*Journalist Elmar Huseynov's
grave. Photo: IRFS*

¹⁰⁵ Ibid

¹⁰⁶ Resolution 1456, (2005) <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1456.htm>



Andreas Gross. Photo: www.coe.int



Tony Lloyd. Photo: www.coe.int

Chapter Four: Hope against hope

Not only the Council of Europe, but many international observers and reformers in Azerbaijan looked to the parliamentary elections of 2005 as a potential turning point in Azerbaijani politics. There was hope that the authorities would make a genuine and determined effort to guarantee a fair and competitive election process. These elections, however, were beset by irregularities and failed to meet international standards.

The 2005 elections in Azerbaijan qualified as a failed transition from authoritarianism to democracy. The ruling Yeni Azerbaijan Party dominated the deeply flawed parliamentary elections held in November 2005. The elections resulted in the opposition securing only a small fraction of the 125 seats in the Milli Majlis (National Assembly), with a substantial majority going to the ruling party and its allies. The run-up

to the election included claims by the regime of an attempted coup, which resulted in the detention and arrest of several former ministers.¹⁰⁷

The OSCE's Office for Democratic Institutions and Human Rights cited among the elections' shortcomings: "interference of local authorities, disproportionate use of force to thwart rallies, arbitrary detentions, restrictive interpretations of campaign provisions and an unbalanced composition of election commissions."¹⁰⁸ President Ilham Aliyev issued two decrees, in May and October 2005, ordering the administration of free and fair elections; these decrees effectively went unheeded.

Thus the hope that the 2005 parliamentary elections would be the first to meet Council of Europe standards did not come true.

Credentials of the Azerbaijani delegation at stake

At the opening of the PACE session on 23 January 2006, Andreas Gross tabled a motion challenging the credentials of the newly elected Azerbaijani delegation on substantial grounds under Rule 8 of the Assembly Rules of Procedures¹⁰⁹ in connection with the parliamentary elections¹¹⁰ that took place on 6 November 2005.

Recent elections "were not in line with European standards," Gross declared, and their results "could not be accepted." A refusal to ratify the credentials of the six-person delegation would send a strong signal: in light of massive manipulations, the parliament in Baku did not have democratic legitimacy. Gross called on the Assembly "to show some backbone."¹¹¹

The debate then moved to the assembly's monitoring committee and its 84 members, where the Committee proposed that the Assembly ratified the credentials of the parliamentary delegation of Azerbaijan. Although endorsed by both rapporteurs, the proposal to suspend voting rights was defeated by the narrowest of margins, 24 votes to 22.¹¹² The text of the draft resolution was agreed in committee in a vote of 24 to 22.

¹⁰⁷ Freedom House, Freedom in the World 2006. <http://www.freedomhouse.org/report/freedom-world/2006/azerbaijan>

¹⁰⁸ <http://bit.ly/18783RM>

¹⁰⁹ <http://bit.ly/15LGSGo>

¹¹⁰ Aliyev's Yeni Azerbaijan Party (YAP) won an allegedly overwhelming victory in parliamentary elections, but these elections were widely seen as seriously flawed. International and domestic election monitors documented blatant fraud and falsification of election results.

¹¹¹ For more, see the European Stability Initiative report, "Caviar Diplomacy" chapter "Showdown in Strasbourg," p. 11-14 http://www.esiweb.org/pdf/esi_document_id_131.pdf

¹¹² <http://bit.ly/KWag30>

The fifth sitting¹¹³ of the Assembly debate on 25 January 2006 was kicked off with the presentation of the Monitoring Committee report, *The challenge of still unratified credentials of the parliamentary delegation of Azerbaijan on substantial grounds*, prepared by rapporteur Tony Lloyd, United Kingdom, Socialist Group,¹¹⁴ and draft resolution 1480, presented in the report.

Like all previous ballots held since Azerbaijan's accession to the Council of Europe in 2001, the parliamentary elections held on 6 November 2005 once again did not meet international standards.

“The report is an important test of the credibility of our Assembly. The parliamentary election that took place in Azerbaijan last November was subject to heavy criticism, not only by our own Parliamentary Assembly election monitoring delegation but by delegations from the Organization for Security and Cooperation in Europe, the European Parliament and, in general, by reputable international monitors, as detailed in our document”.

Tony Lloyd, UK, Socialist Group, 25 January 2006, fifth sitting¹¹⁵

Lloyd's report set out a series of measures that Azerbaijan urgently needed to take “in order to restore confidence in the democratic process,” ahead of the re-run elections on 13 May in the 10 constituencies where results were annulled. Although Lloyd refers to the re-runs as “an opportunity for Azerbaijan to make it clear to the world and to its own people (...) in its determination to offer proper, free, fair elections to all the people of Azerbaijan” he does sound skeptical: “The election was seriously flawed. Indeed, it was so flawed that simply re-running 10 elections will not resolve the problem with the credibility of the electoral process,” he said.¹¹⁶

“The report provides the Assembly with an opportunity to do one of two things. First, it can simply ratify the credentials of the Azerbaijan delegation. Colleagues may choose to vote for the wording of the main text. Secondly, colleagues will have an opportunity to vote for an amendment – obviously, Mr President, you will wish to consider that later – that will allow the Assembly to choose, not to strip the delegation of those credentials, but to say that a flawed Milli Majlis should not be represented here.”

Tony Lloyd, UK, Socialist Group, 25 January 2006, fifth sitting¹¹⁷

¹¹³ See Doc. 10807, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr Tony Lloyd). *Text adopted by the Assembly* on 25 January 2006 (5th Sitting).

¹¹⁴ Doc 10807, rev. <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileId=11122&Language=en>

¹¹⁵ Minutes available at <http://assembly.coe.int/Main.asp?link=/Documents/Records/2006/E/0601251500E.htm>

¹¹⁶ Ibid

¹¹⁷ Ibid

“However”- one little word matters

Following Lloyd’s address, Christos Pourgourides, Cyprus, presented the opinion of the Committee on Rules of Procedure and Immunities on the “the successful contestation of credentials of a national delegation:”¹¹⁸

On sanctions against member states, the provisions of the Statute of the Council of Europe¹¹⁹ and of the UN Charter¹²⁰ both refer to either serious violations or persistent violations of their obligations by such states. This is how the term “persistent” is interpreted in international law: first, there must be repeated violations; secondly, the term “persistently” points to a stubborn resolve to continue the law-breaking practice; thirdly, the “persistent violation” formula emphasizes a “quantitative” and a “qualitative” aspect. The importance of the principle violated can also be taken into consideration. The explanations given in the report of the Monitoring Committee conform with those principles. The criteria mentioned in rule 8.2.b of the Assembly’s Rules of Procedure¹²¹ have therefore been met.

I shall now discuss the consequences of the persistent failure of the Azeri authorities to honor obligations and commitments. The draft resolution presented in the Monitoring Committee report concludes that the conduct of the November 2005 parliamentary elections in Azerbaijan falls within the provision of rule 8.2.b of the Assembly’s Rules of Procedure¹²². However, the Monitoring Committee proposes that the Assembly should ratify the credentials of the parliamentary delegation of Azerbaijan. In order to make paragraphs 10 and 11 fully consistent, it has been proposed that the word “however” should be inserted at the beginning of paragraph 11.

That conclusion conforms with the possibilities provided for in rule 8.5 of the Rules of Procedure¹²³. The Committee on Rules of Procedure and Immunities

¹¹⁸ Ibid

¹¹⁹ <http://bit.ly/15RYQGk>

¹²⁰ <http://bit.ly/fA2pq6>

¹²¹ According to rule 8.2.b of the Assembly’s Rules of Procedure, one of “the substantive grounds on which credential may be challenged” is “persistent failure to honour obligations and commitments and lack of co-operation in the Assembly’s monitoring procedure”. The Assembly’s Rules of Procedure, Resolution 1202 (November 4 1999) is available at <http://www.assembly.coe.int/RulesofProcedure/PDF/Rules2013.A5.pdf>

¹²² Ibid

¹²³ Rule 8.5. Reports to the Assembly or the Standing Committee under paragraphs 3 and 4 shall contain a draft resolution proposing in its operative part: 8.5.a. ratification of the credentials, 8.5.b. non-ratification of the credentials, 8.5.c. ratification of the credentials together with depriving or suspending the exercise of some of the rights of participation or representation of members of the delegation concerned in the activities of the Assembly and its bodies. The Assembly’s Rules of Procedure, Resolution 1202 (November 4 1999) is available at <http://www.assembly.coe.int/RulesofProcedure/PDF/Rules2013.A5.pdf>

notes that the draft resolution presented by the Monitoring Committee proposes that the Assembly should “instruct its Monitoring Committee to submit to the Assembly at its June part-session a report on the progress made in all the areas mentioned in paragraph 9 of the resolution. On the basis of this report, the Assembly will then examine whether to apply rule 9 of the Rules of Procedure on the reconsideration of previously ratified credentials on substantial grounds.” That proposal is consistent with the Rules of Procedure.

The proposal to suspend voting rights of Azerbaijani was strongly criticized by Mike Hancock, UK, Alliance of Liberals and Democrats for Europe:¹²⁴



Mike Hancock
Photo: www.coe.int

Mr Lloyd’s amendment is as useful as your giving me your umbrella to go out in a hurricane, Mr President. It is pointless, because we have already accepted that Azerbaijan is in. Everyone, including Mr Gross and Mr Lloyd, accepts that we have given the Azerbaijan delegation credentials, but we will change the situation by withholding its voting rights for a few months to teach Azerbaijan a lesson. Do we seriously believe that that is what will happen? I think not.

The most pro-Aliyev regime non-Azerbaijani MP in the Assembly, four years later, Hancock would tell in his interview with Azerbaijani pro-governmental media: “You have a government and it is legal whether someone likes it or not. You have a president with a broad mandate, the president is popular, and is popular because he has no alternative. In my opinion, he tries to do what is best for Azerbaijan.”¹²⁵

Any change is good enough

In June 2005, the Council of Europe had said that Azerbaijan would face consequences in January 2006 if things did not improve. The previous resolution 1456 (2005)¹²⁶ on the functioning of democratic institutions in Azerbaijan warned that the Assembly would regard the 2005 parliamentary elections as a decisive test for the democratic credibility of the country. According to Andreas Gross, the proposal to withhold Azerbaijan’s voting rights was the opportunity to keep that commitment. Gross urged the Assembly to consider whether they would be able to look themselves in the mirror tomorrow morning without shame.

¹²⁴ Minutes available at <http://assembly.coe.int/Main.asp?link=/Documents/Records/2006/E/0601251500E.htm>

¹²⁵ <http://www.today.az/news/politics/64470.html>

¹²⁶ <http://assembly.coe.int/Documents/AdoptedText/ta05/ERES1456.htm>

However, instead of a long-awaited sanction against Azerbaijan, the Assembly responded with yet another, although strongly worded resolution. (Resolution 1480 (2006),¹²⁷ The challenge of still unratified credentials of the parliamentary delegation of Azerbaijan on substantial grounds).

So the Assembly decided, in Lloyd's words, to "put the ball in the court of people who want to make the minimum progress and who believe that any change is good enough."

From the first clause, the resolution slammed Azerbaijan for its failure to meet Council of Europe standards of democracy and freedoms:

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

Although the resolution concluded that the conduct of the November 2005 parliamentary elections in Azerbaijan fell within the provisions of Rule 8.2.b of the Assembly Rules of Procedure: "persistent failure to honor obligations and commitments,"¹²⁸ the Assembly decided to ratify the credentials of the parliamentary delegation of Azerbaijan.

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

The recommendations contained in this resolution, had not been implemented. The condition put before Aliyev's government had not been met. Election laws had not been improved. Media crackdown continued. When the re-runs took place none of opposition candidate got a seat in the new parliament.

¹²⁷ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/ERES1480.htm>

¹²⁸ <http://bit.ly/15LI4JG>

“We want to bring the authorities to the right track”

In Resolution 1480 of January 2006, the Assembly decided that, in order to restore confidence in the electoral and democratic processes in Azerbaijan, several conditions would have to be met in the re-run of the elections. They related to freedom of assembly, freedom of expression, amendments to the electoral code and the investigation of electoral fraud. Following Assembly instructions to monitor the implementation of 2006 resolution, Herkel and Gross prepared a report, which expected to decide fate of credentials of Azerbaijani delegation. After the Assembly failure to hold Azerbaijan accountable for ongoing abuse of fundamental rights and freedoms, the verdict was predictable. Although the report¹²⁹ documented many shortcomings, especially in the field of freedom of expression, it did not suggest the voting rights of Azerbaijani should be suspended:

Considering that cooperation 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 conduct of the November 2005 parliamentary elections fell far short of international standards, with serious violations occurring both prior to and on election day. These shortcomings once again underscored the urgent need for major reforms in the areas of freedom of expression and assembly, the electoral law and its implementation, and accountability mechanisms.

“Azerbaijan does need the Council of Europe to implement these reforms,” the report suggested. With all previous elections failing to meet key, broadly accepted international standards, the hopes were with the forthcoming presidential elections in 2008 “which must “fully meet international standards.”

However, there was not hope, but only fatigue in the speeches of the co-rapporteurs when the report was presented at the 16th sitting of the Assembly¹³⁰ on 26 June 2006.

“Our proposal is not to reconsider the credentials of the Azerbaijan delegation at this stage – I emphasize, at this stage, because we promised to have a much bigger and profound report on Azerbaijan next year.”

Herkel

“In this case, the elections have been a failure and the rerun has not made it possible to take away the bad impressions that we had in November. Nevertheless, we do not challenge the credentials again, but we want to bring the Azer-

¹²⁹ Doc. 10959 , 12 June 2006, Implementation of Resolution 1480 (2006) on the challenge of credentials of the parliamentary delegation of Azerbaijan Co-rapporteurs: Andreas Gross, Switzerland, Socialist Group and Andres Herkel, Estonia, Group of the European People's Party.

¹³⁰ 16th sitting, June 26 2006 <http://assembly.coe.int/Main.asp?link=/Documents/Records/2006/E/0606261500E.htm>

bajjani authorities back on the right track. We do not think that these people deserve such power, given their poor legitimacy.

We have the impression that the Azerbaijani authorities are greatly tempted, because their oil price is so high, because the west needs so much oil and because many people in the Chamber think that their country's interest in Azerbaijani oil takes precedence over the respect that we have to show to human rights values, democracy and our other principles that should apply in Azerbaijan. We must defend those principles.”

Gross

Although a re-run was initiated in only 10 constituencies, there were many more constituencies with problems. The co-rapporteurs pointed out to the “very limited investigation of electoral fraud” and said that no amendments had been introduced either to the law or to electoral code. The composition of the electoral commission remains a cause for concern.

“The saddest story is about the freedom of expression,” stated Herkel. The violence against journalists is “the saddest problem” while electronic media bias also raises concern. Three days before this debate took place, on 23 June 2006, officials arrested Mirza Sakit Zakhidov, a prominent reporter and satirist for *Azadliq* newspaper, on spurious drug charges, in what rights watchdogs believed to be an attempt apparently to silence him for criticizing President Ilham Aliyev and his government's corruption.

At the end of the debate, the Assembly adopted resolution 1505 (2006)¹³¹ on Implementation of Resolution 1480 (2006) on the challenge of credentials of the parliamentary delegation of Azerbaijan, which once again reminded Azerbaijani government of its commitments and obligations that remained unimplemented. The resolution concluded:

“The Assembly considers that co-operation between the Council of Europe and Azerbaijan remains essential for the development of democracy, the rule of law and respect for human rights in the country. Such co-operation 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 electoral reform.”

¹³¹ Resolution 1505 (2006) on Implementation of Resolution 1480 (2006) on the challenge of credentials of the parliamentary delegation of Azerbaijan <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/ERES1505.htm>



Andres Herkel
Photo: www.coe.int



Gultakin Hajiyeva (on the left) and Samed Seyidov
Photo: www.coe.int

Chapter Five: Is the glass half empty or half full?

“I ask both rapporteurs, what has really changed during this period? Yes, economic growth is running at about 30%, but 25% of the population still live in poverty. The growth of the economy is leading not to a growth of social welfare, but to a growth in corruption.”

- Platvoet, Netherlands, Assembly debate, 11th sitting, 16 April 2007¹³²

¹³² 11th sitting, 16 April 2007, <http://assembly.coe.int/Main.asp?link=/Documents/Records/2007/E/0704161500E.htm>

“The biggest problems are corruption and the issue of political prisoners, but I shall not talk about bad news because, when speaking about young democracies, the question is whether the glass is half full or half empty.”

- Prorokovic, Serbia, Assembly debate, 11th sitting, 16 April 2007¹³³

“What has happened since January 2006? My honest answer would be: not so much. Unfortunately, the small positive steps were always overshadowed by bad news that we got from the country. However, there are forthcoming elections, which will be a new opportunity for the country.”

- Herkel¹³⁴

On 14 November 2006, Azerbaijan signed an action plan with the European Union, under the framework of the European Neighbourhood Policy.¹³⁵ The action plan referred to the country's international commitments, including those before the Council of Europe, in the fields of democracy, rule of law and human rights.

On 28 December 2006, the President of Azerbaijan signed a Decree on the National Action Plan¹³⁶ on the Protection of Human Rights. The decree stated that the guaranteeing of human and civil rights and freedoms was a nationwide task in Azerbaijan. The text was promulgated by the President bearing in mind the priorities determined by the UN “Millennium development goals”¹³⁷ and by the Third Summit of the Council of Europe¹³⁸ in the field of human rights protection, democracy, and rule of law, to expand activities in this sphere.

Following the adoption of those two seemingly landmark documents - and in fact, is still ongoing - Azerbaijan's human rights record further deteriorated, particularly in the field of freedom of expression. Inspired by impunity for violations of the country's international commitments, Aliyev's government grew more and more comfortable harassing Azerbaijanis who dared to criticize the regime.

¹³³ Ibid

¹³⁴ Ibid

¹³⁵ <http://bit.ly/1d13Le8>

¹³⁶ <http://bit.ly/PxH3Tw>

¹³⁷ <http://bit.ly/18QKVCj>

¹³⁸ <http://bit.ly/15fF3oy>

“We need your love, support and understanding”

“By adopting the resolution, we will send a strong message to those political forces in my country headed by our former colleague Ilham Aliyev, which have a strong democratic aspiration, to push forward and accelerate reforms in the political, economic, social and judicial spheres. We have European aspirations and consider ourselves a part of Europe, but we need your love, support and understanding. I believe that our friends in the Council of Europe will never refuse us those.”

Gultakin Hajiyeva, Azerbaijan, Assembly debate, 11th sitting, 16 April 2007¹³⁹

Amid widespread international criticism of the Azerbaijani government over its poor human rights record, the Assembly devoted its 11th sitting, on 16 April 2007,¹⁴⁰ to discussion of the status of implementation of obligations and commitments by Azerbaijan.

Although the report on Honoring of obligations and commitments by Azerbaijan,¹⁴¹ prepared by co-rapporteurs Herkel and Lloyd, highlighted many shortcomings in Azerbaijan's record of honoring its membership obligations and Resolution 1545¹⁴² was critical, the debate was soft. The Assembly members, with the exception of several MPs and rapporteurs themselves, did not rush to criticize the Azerbaijani government's conduct. Some MPs even mentioned “great efforts to solve problems,” “certain improvements in the field of human rights,” “positive progress,” “strong political will,” and so on.¹⁴³

Still, Resolution 1545,¹⁴⁴ with all strictures was adopted.

“The most important issue to follow in Azerbaijan”

According to PACE member Cavusoglu, “media freedom is the most important issue to follow in Azerbaijan.” Therefore a significant portion of the adopted resolution focused on the increasingly challenging environment for independent and opposition media. Since the adoption of the previous resolution 1505 (2006),¹⁴⁵ “instead of improving, the general environment for the independent media has deteriorated,” read the resolution. Indeed, with the regime frequently using violence and threats against the media, the country came near the bottom of the worldwide press freedom index of Reporters Without Borders.¹⁴⁶

¹³⁹ Eleventh sitting, 16 April 2007, <http://assembly.coe.int/Main.asp?link=/Documents/Records/2007/E/0704161500E.htm>

¹⁴⁰ Ibid

¹⁴¹ Document 11226, 30 March 2007, by the Monitoring Committee prepared by co-rapporteurs Andres Herkel, Estonia, Group of the European People's Party and Tony Lloyd, United Kingdom, Socialist Group, <http://bit.ly/13E4DCy>

¹⁴² <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1545.htm>

¹⁴³ Eleventh sitting, 16 April 2007, <http://assembly.coe.int/Main.asp?link=/Documents/Records/2007/E/0704161500E.htm>

¹⁴⁴ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1545.htm>

¹⁴⁵ <http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/ERES1505.htm>

¹⁴⁶ Azerbaijan was 139th in an index measuring the level of press freedom in 169 countries throughout the world http://en.rsf.org/spip.php?page=classement&id_rubrique=34

“It has to be said that sometimes such progress has been pulled like teeth, in the face of a lot of resistance, before we got the right result. In that context, although we very much welcome the decision to allow ANS to continue to broadcast, and for the *Azadliq* newspaper to continue, it was a struggle to ensure that that happened.”

Lloyd, co-rapporteur

The Assembly recalls “the serious concerns” it expressed in its Resolution 1505 (2006)¹⁴⁷ about violent incidents directed against journalists. Two new cases were of particular concern to the Assembly: a physical attack on *Azadliq* newspaper journalist Nijat Huseynov, and death threats against Eynulla Fatullayev, the editor-in-chief of *Realny Azerbaijan*. The Assembly urged the Azerbaijani authorities to properly investigate attacks and threats against journalists, stating that the perpetrators should be found, tried and punished.

The Assembly was concerned by the increased number of civil and criminal defamation proceedings brought against opposition journalists and newspapers by public officials, leading to intimidation and self-censorship. The Assembly urged the Azerbaijani authorities to consider a legal reform to decriminalize defamation and encouraged the Council of Europe’s assistance in this field. The resolution “welcomes efforts undertaken by the Organization for Security and Co-operation in Europe (OSCE), which have led to the elaboration of a draft law on defamation.”

Implementation update: Ironically, six years on, with both the Council of Europe and the OSCE continuously offering their assistance, defamation remains a criminal offense. Despite countless calls from the local and international community to decriminalize defamation, this has so far gone unheeded by the Azerbaijani government. The government cited many reasons for this – namely that such an action would only serve unprofessional journalists, that decriminalization of defamation must first occur in leading countries of the democratic world before Azerbaijan will take such a step, and that such an act would lead to citizens of Azerbaijan retaliating directly against journalists who write slanderous articles.

In the year following the resolution, criminal libel and defamation laws were used to imprison at least six journalists; a total of 42 libel and defamation cases against the press were registered in 2007.¹⁴⁸

¹⁴⁷ <http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/ERES1505.htm>

¹⁴⁸ Institute for Reporters’ Freedom and Safety, 2007 Annual Freedom of Expression report.

The Assembly noted that *Azadliq* newspaper had been evicted from its rent-free office space. The Assembly was aware that *Azadliq* was to be provided with new premises in the Azerbaijan Publishing House and hoped that “the new premises allow the newspaper to operate normally.”

Implementation update: Well known for its criticism of the authorities, *Azadliq* newspaper has become a frequent target of defamation lawsuits, many filed by public officials or their relatives. As a result of steep fines imposed on *Azadliq* through defamation lawsuits and other economic factors, the newspaper remains in a critical financial situation and has announced several times it might be forced to close.

The resolution expressed particular concern over the crackdown on ANS TV channel, when the channel was “silenced” following a decision taken by the NTRC not to extend its license on the basis of alleged violations of relevant legislation. The resolution calls on the authorities to find “a definitive solution without further delay” in the case of ANS TV.

Bogus charges: an alarming new trend

The resolution has not been implemented. Azerbaijan has fallen 17 places since the resolution was adopted in 2007 in the 2013 Reporters Without Borders Press Freedom Index, where it is now ranked 156th out of 179 countries.¹⁴⁹

Despite Resolution 1545 adopted in 2007, which called for a better environment for independent media, media freedoms continued to rapidly deteriorate, with at least 10 journalists behind bars and ongoing intimidation of independent and opposition media by authorities.

In 2007, the number of imprisoned journalists in Azerbaijan reached never before seen heights. At the pinnacle of this alarming trend, eleven journalists were wrongfully imprisoned. This problem was only partially resolved on 27 December 2007, when the president signed a presidential pardon decree, which included the names of five imprisoned journalists. At the same time, four of Azerbaijan’s most critical writers, Sakit Zahidov, Eynulla Fatullayev, Mushvig Huseynov, and Ganimat Zahidov, remained behind bars at the end of the year.

Journalists in Azerbaijan were mainly imprisoned through Azerbaijan’s criminal libel and defamation laws; however, a new and alarming trend in 2007 was the silencing of critical journalists by arresting them on non work-related, spurious charges. This situation was first observed with imprisoned *Azadliq*

¹⁴⁹ 2013 Press Freedom Index, http://en.rsf.org/spip.php?page=classement&id_rubrique=1054

newspaper journalist/satirist Sakit Zahidov in June 2006. In 2007, three more well-known and critical journalists, Eynulla Fatullayev, Mushvig Huseynov, and Ganimat Zahidov, were also imprisoned in this manner.

The government also allowed the country's promising freedom of information law to languish, missing an important opportunity to make public affairs more transparent.

No progress was made in investigating the 2005 murder of newspaper editor Elmar Huseynov, widely believed to have been killed because of his criticism and exposure of political corruption.

These factors combined – imprisonment, unsolved attacks and murders - have resulted in many journalists practicing self-censorship, and in some cases, avoiding entirely some of the most important issues facing Azerbaijani society, particularly corruption.



Official Visit of Emin HUSEYNOV, Chairman of the Institute for Reporters "Freedom and Safety Azerbaijan" and Thorbjørn Jagland, Secretary General of the Council of Europe. Photo: www.coe.int



*Parliamentary Assembly Session June 2010. Inaugural ceremony of the Exhibition.
Photo: www.coe.int*

Chapter Six: 2008 Presidential election: “a new touchstone”

President Ilham Aliyev is expected to maintain his position in the presidential elections in October 2008 thanks to Azerbaijan's impressive level of economic growth from substantial oil revenues, which will increase even further as the Baku-Tbilisi-Ceyhan oil and South Caspian natural gas pipelines step up exports.

Freedom House, Nations in Transit 2008¹⁵⁰

¹⁵⁰ Freedom House, Nations in Transit, 2008, Azerbaijan <http://www.freedomhouse.org/report/nations-transit/2008/azerbaijan>

“Over five years, many resolutions on Azerbaijan have been adopted to allow Azerbaijan to fulfil commitments to the principles of the Council of Europe. The presidential elections in 2008 will be a new touchstone; we cannot, however, have an endless row of touchstones.”

Platvoet, Netherlands¹⁵¹

“The 2008 elections will be a very serious matter in deciding whether Azerbaijan really belongs here in the family of the Council of Europe Assembly, committed to democracy, and respect for the democracy of the people.”

Lloyd¹⁵²

On 15 October 2008, Azerbaijan was to hold its second presidential election since its accession to the Council of Europe in 2001. Considering that all of the elections had generally failed to meet basic democratic standards, the question was whether the Assembly would forgive Aliyev's regime yet another flawed election. The Monitoring Committee's report, prepared by co-rapporteurs Herkel and Jivkova (Doc. 11627¹⁵³), underlined that “the country cannot afford to fall short again in meeting the Council of Europe commitments and standards for democratic elections.”

The same report expressed a great concern about “the deteriorating human rights situation in Azerbaijan.” Restrictions on the freedom of expression, the harassment and intimidation of opposition journalists through defamation court proceedings, imprisonment, physical attacks and threats, and limitations of the right to freedom of assembly and association are “matters of great concern” and “inadmissible in a Council of Europe member state.”¹⁵⁴ Yet another deadline for Azerbaijan to improve was set in Resolution 1614 (2008)¹⁵⁵ drawn from the report by Herkel and Jivkova and adopted on 24 June 2008: curtailed freedoms of expression and assembly “must be addressed without further delay and before the next presidential election.”

¹⁵¹ 11th sitting, 16 April 2007, <http://assembly.coe.int/Main.asp?link=/Documents/Records/2007/E/0704161500E.htm>

¹⁵² Ibid

¹⁵³ Document 11 627 Report by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). Co-rapporteurs: Mr Andres HERKEL, Estonia, Group of the European People's Party and Mrs Evguenia JIVKOVA, Bulgaria, Socialist Group <http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=12114&Language=EN>

¹⁵⁴ Ibid

¹⁵⁵ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1614.htm>

Billions of petrodollars and a suppressed press

By the time Resolution 1614 was put to a vote, Azerbaijan's government had succeeded in suppressing fundamental freedoms to serve its own interests. The country experienced an inflow of billions of petrodollars, but this was thought to mainly line the pockets of Azerbaijan's elite. While President Ilham Aliyev reported on 18 January 2008 that 16 percent of the population lived below the poverty level,¹⁵⁶ local experts believed that this figure was actually closer to 40 percent. Aliyev also said that his administration had created 535,000 jobs,¹⁵⁷ most of them permanent and outside of Baku; an impressive achievement, if confirmed. Inflation also surged in the same period: 20 percent in 2007.

Society was ripe with discontent, but most people chose only to express this among their closest confidants, aware of what happened to people who complained too loudly, like journalists.

The severe deterioration of press freedom was clearly related to the upcoming 2008 presidential election. On one hand, the Azerbaijani government appeared to want to distract people from shortcomings in the areas of elections, by occupying them with matters related to imprisoned journalists and other press freedom violations. And, on the other hand, the government needed to ensure that Ilham Aliyev was presented to society as the sole capable candidate for the presidency.

“Great concerns” or “double standards?”

A strongly worded resolution was put to a vote during the 21st sitting of the Assembly. Co-rapporteurs Jivkova and Herkel both concluded that Azerbaijan's human rights record had deteriorated, especially in the field of freedom of expression:



Eugenia Jivkova
Photo: www.coe.int

“Our conclusion is that the restrictions on the freedom of expression, the arrest of media representatives, restrictions on the freedom of assembly, the lack of a follow-up procedure on alleged cases that have been raised, and conditions in places of detention are matters of deep concern.”

Jivkova, 21 sitting on 24 June 2008¹⁵⁸

¹⁵⁶ Deyerler.org news agency, “The Number of Poor will Increase by the End of the Year”

¹⁵⁷ BBC Monitoring (Turan News Agency), «Azeri Leader's 'Neo-Soviet' Speeches Aim to Mislead People, Think Tank Says,» October 24, 2007.

¹⁵⁸ <http://assembly.coe.int/Main.asp?link=/Documents/Records/2008/E/0806241000E.htm>

“The authorities seem to believe that they are protecting the public interest when they try to silence media which they consider to be unprofessional. For our part, we believe that only weak governments use the law to silence political and social debate in the media. If there is no room for discussion in the media, opposition will have to go underground or in exile outside the country.”

Monitoring Committee report, Herkel and Jivkova (Doc. 11627¹⁵⁹)

Some MPs, however, seemed to disagree with strong wording of both the report and draft resolution, blaming the Council of Europe for the use of “double standards:”

“We have discussed Azerbaijan’s obligations eight times while there are countries that joined in 1996 that we have discussed only three times, and I am pretty convinced that the situation on human rights, the rule of law, and implementing democratic principles are not that much worse in Azerbaijan. That makes me think that we are introducing double standards in the Council of Europe, and that would be a shame for this Organization. We must treat all countries equally. This is about the reputation of the Council of Europe.”

Ojuland (Estonia)

“We should not have double standards. We should treat every country the same and give Azerbaijan the same doubt that we have given so many other countries over the past few years.”

Hancock (UK)

As for freedom of assembly, it also corroded. Ahead of the 2008 presidential election, restrictions on freedom of assembly intensified, especially for political parties critical of the government. Notably, 20 days before the Assembly adopted Resolution 1614 (2008),¹⁶⁰ on 14 June 2008, Emin Huseynov, director of IRFS and a prominent human rights defender, was detained and beaten by police. He was hospitalized with severe head and neck injuries.

The co-rapporteurs reminded the Assembly that unacceptable violations of freedom of assembly were one of the reasons the credentials of the Azerbaijani delegation had been challenged in January 2006.¹⁶¹

¹⁵⁹ Document 11 627 Report by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). Co-rapporteurs: Mr Andres HERKEL, Estonia, Group of the European People’s Party and Mrs Evguenia JIVKOVA, Bulgaria, Socialist Group <http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=12114&Language=EN>

¹⁶⁰ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1614.htm>

¹⁶¹ See Chapter 4 of this section

“Violations of freedom of assembly in Azerbaijan had indeed been repeatedly and firmly denounced by the Assembly, especially prior to or after elections, and most recently after the parliamentary elections of November 2005,” wrote the co-rapporteurs in their memorandum.¹⁶²



*Riot Police Break Up Protest
In Downtown Baku, 2013
Photo: IRFS*

“Since 2007 Azerbaijani government declined almost all the requests of opposition to hold peaceful assemblies in the city center. Only one location in Baku outskirts (called 20th Area) is allocated for assemblies, and even in this case, the public transport and movement of people to this location is hindered in different ways, political activists are detained before the assemblies and released only after they are over. Neither in Baku, nor in regions of Azerbaijan, local governments provide a list of locations that could be assigned for public assemblies.”

Resolution 1614 (2008)¹⁶³ on the functioning of democratic institutions in Azerbaijan

Implementation update: Although violations of freedom of assembly in Azerbaijan have been repeatedly and strongly denounced by the Assembly, especially prior to or after elections, no single step has been taken to improve the situation. Several years after the resolution, in November 2012, Parliament dramatically increased the penalties for organizing or participating in unsanctioned protests.¹⁶⁴ Protest participants can now be fined between 500 and 1,000 AZN (approximately the same amount in EUR), and organizers can be fined between 1,500 and 3,000 AZN if they are ordinary citizens, or between 3,000 and 6,000 AZN if they are officials. If the organizer is a legal entity – such as a political party or an NGO – it can be fined between 15,000 and 30,000 AZN.¹⁶⁵

The Assembly further urged the Azerbaijani authorities to take all necessary measures to guarantee freedom of association in both law and practice and in compliance with Article 11 of the Convention.

Implementation update: Since the adoption of this resolution, freedom of association has been dramatically curtailed. NGOs operating in the sphere of human right are frequently denied registration. Although the ECtHR has ruled against Azerbaijan in several cases related to NGO registration, the local courts have failed to consider these judgments as precedents.

¹⁶² Ibid

¹⁶³ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1614.htm>

¹⁶⁴ <http://bit.ly/Z8ZFrR>

¹⁶⁵ <http://bit.ly/ZeMtkk>



*Mahmud Mammadguliyev, Deputy Minister of Foreign Affairs of Azerbaijan (on the left)
and Secretary General of the Council of Europe Thorbjørn Jagland. Photo: www.coe.int*

Was the condition for a fair and transparent election met?

The Assembly's answer to this question was given in Resolution 1747 (2010), "The state of democracy in Europe and the progress of the Assembly's monitoring procedure:"¹⁶⁶

The outcome of the presidential election of 2008 "was the reflection of the will of the country's electorate"¹⁶⁷ but violations were noted during the vote counting, and in particular, the tabulation of votes. Regrettably, five political parties did not take part in the election and there was no real competition between the platforms and political ideas.

¹⁶⁶ Resolution 1747 (2010), <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1747.htm>

¹⁶⁷ <http://bit.ly/15NB1q2>

Chapter Seven: “2010 Elections: The opportunity to issue a driving license for the highway of democracy is not to be missed”

“They have a president who sat with us in this Chamber and who knows only too well the responsibilities that now fall on him to deliver the commitments that the country has made. I have no doubt that in your possible five years as rapporteur, Mr Debono Grech, we will see not just a blossoming democracy, but one that has truly flourished.”

Mike Hancock, UK¹⁶⁸

Authoritarianism in Azerbaijan is expected to deepen, facilitated by the government's unchallenged hold on power and strong revenues from the country's vast energy resources. The authorities will likely silence dissenting voices ahead of the 2010 parliamentary elections, which are expected to reconfirm the ruling party's dominance.

Freedom House, Nations in Transit, 2010¹⁶⁹

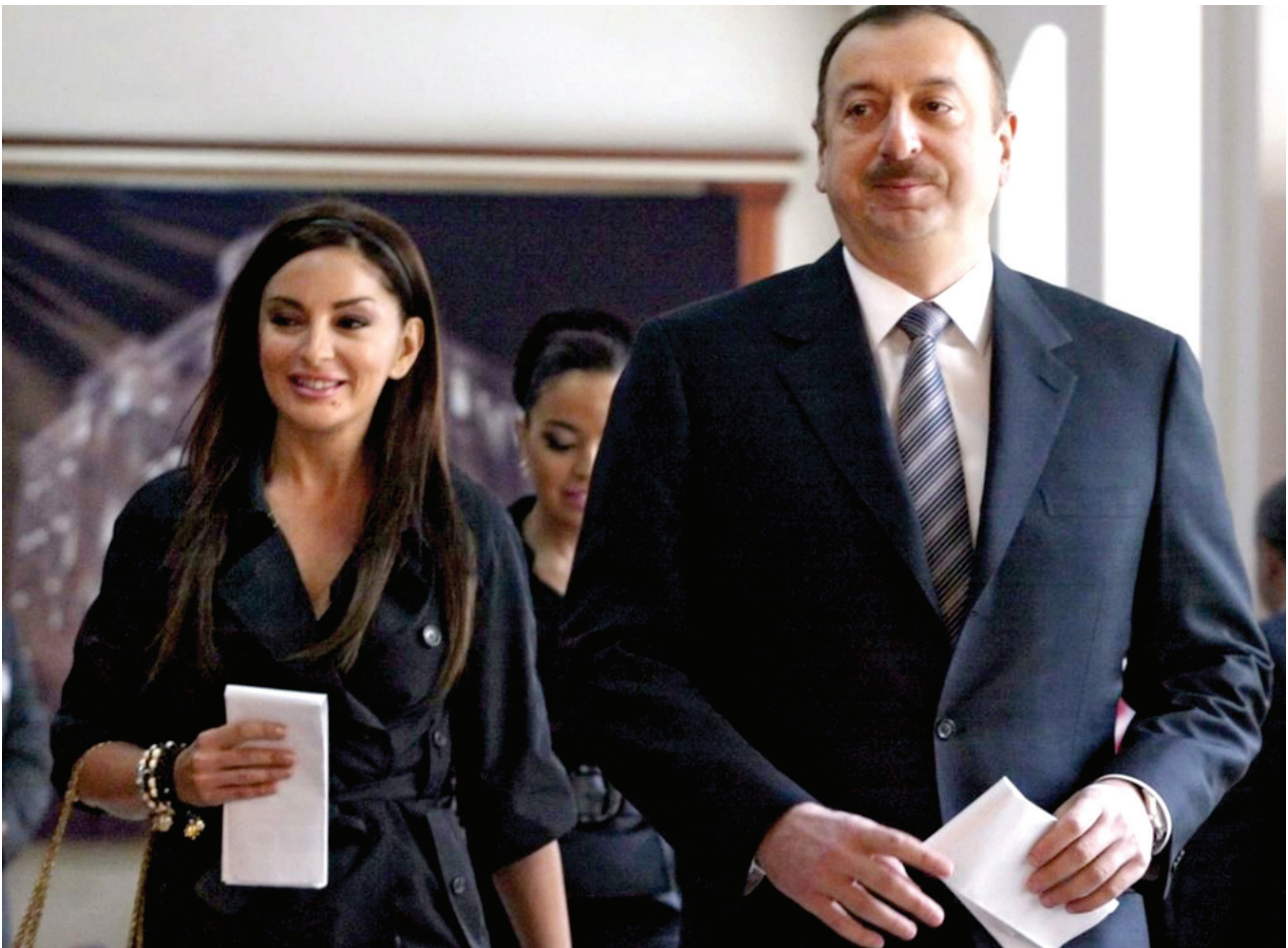
“The committee calls on the authorities to ensure the necessary conditions for the full compliance of the November parliamentary elections with European standards and to pass on a clear message at the highest political level, that electoral fraud will not be tolerated”.

Monitoring Committee report, 31 May 2010¹⁷⁰

¹⁶⁸ 24 June 2010, 26th sitting <http://assembly.coe.int/Main.asp?link=/Documents/Records/2010/E/1006241500E.htm>

¹⁶⁹ <http://www.freedomhouse.org/report/nations-transit/2010/azerbaijan>

¹⁷⁰ Document 12270, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, co-rapporteurs: Debono Grech and Andreas Herkel, available at http://www.assembly.coe.int/ASP/Doc/XrefDocDetails_E.asp?FileID=12457



President Ilham Aliyev and his wife, Mehriban Aliyeva, arrive at a polling station in Baku to vote in the referendum. March 2009. Photo: EPA

“...the forthcoming parliamentary elections will be a perfect opportunity to put behind us the atmosphere of suspicion that poisons the pathway to a generally recognized democratic system in Azerbaijan and undermines its credibility. The opportunity to issue a driving license for the highway of democracy is not to be missed.”

Mendes Bota (Portugal)

“I shall finish with a quotation from an old friend whom I have met many times in Azerbaijan. He said that when Azerbaijan was part of the Soviet Union, people dreamed about having their own independent democratic state. Now they dream that their own state will stop all the intimidation and undemocratic practices so that they can feel themselves to be the dignified citizens of a fully democratic state. That is what I wish for the Azerbaijani nation.”

Herkel, co-rapporteur¹⁷¹

¹⁷¹ 24 June 2010, 26th sitting <http://assembly.coe.int/Main.asp?link=/Documents/Records/2010/E/1006241500E.htm>

Azerbaijan's human rights record further deteriorated. A February 2009 referendum on constitutional amendments abolished presidential term limits,¹⁷² which allowed for President Ilham Aliyev to remain in office indefinitely. Contrary to its accession commitments, the Azerbaijani government continued to engage in blatant violations of freedom of expression, including harassment, intimidation, and violence against journalists, detention and imprisonment of journalists on bogus charges, and criminal libel laws; severe restrictions on freedom of assembly; politically motivated prosecutions of civil and political activists and abuses of other fundamental freedoms.

The Aliyev regime continued to hold a high number of political prisoners, prompting the Assembly to appoint a rapporteur on the issue of political prisoners in Azerbaijan.

On the eve of the 10th anniversary of Azerbaijan's membership in the Council of Europe, the Assembly said that the democratic credibility of the country was "again at stake" during its November 2010 parliamentary elections. "Despite progress being made during the 2008 presidential election, some systemic shortcomings, including the lack of competitiveness and genuine political pluralism, need to be redressed," read Resolution 1750 (2010) on the functioning of democratic institutions in Azerbaijan.¹⁷³

The text of the resolution was adopted by the Assembly on 24 June 2010 (26th Sitting)¹⁷⁴ following the release of the Document 12270,¹⁷⁵ the report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) prepared by co-rapporteurs Debono Grech and Andreas Herkel.

No term limit for President Aliyev

The Assembly "takes note" of 2009 constitutional amendments, "regrets" that there was no prior request to the Venice Commission on the proposed amendments, some of which are of crucial importance for the functioning of the country's democratic institutions, and especially for the electoral process.

In March 2009 the Council of Europe's Venice Commission, the advisory body on constitutional matters, criticized the constitutional amendments, stating that they distort the balance of power and contradict European practice¹⁷⁶. The main concerns raised by the reforms relate to the abolition of the two-term

¹⁷² <http://bit.ly/Uy7NQd>

¹⁷³ <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1750.htm>

¹⁷⁴ 24 June 2010, 26th sitting <http://assembly.coe.int/Main.asp?link=/Documents/Records/2010/E/1006241500E.htm>

¹⁷⁵ Document 12270, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, co-rapporteurs: Debono Grech and Andreas Herkel, available at http://www.assembly.coe.int/ASP/Doc/XrefDocDetails_E.asp?FileID=12457

¹⁷⁶ <http://bit.ly/1fTqx7b>

limit to the office of President and to the President's position. Under the previous provisions, the President could only be elected for two consecutive terms, and the amendment abolished the limit to the number of terms.

According to the Venice Commission's opinion,¹⁷⁷ "Azerbaijan, the Constitution of which provides for a Presidential system of Government, is undoubtedly a country where the President concentrates extensive powers in his hands, given the few checks and balances which exist. It was therefore logical that the original text of the Constitution of Azerbaijan provided for a two-term limit. ... As a rule, it can be said that the abolition of existing limits preventing the unlimited re-election of a President is a step back, in terms of democratic achievements. ... Explicit constitutional limitations on the successive terms of a president are particularly important in countries where democratic structures and their cultural presuppositions have not yet been consolidated."¹⁷⁸

Under the European Convention on Human Rights, all citizens of Council of Europe member states have a right to democratic governance. The removal of a presidential term limit in Azerbaijan (Article 101, V)¹⁷⁹ violates the European Convention of Human Rights¹⁸⁰ and constitutes a breach of international law.¹⁸¹



*Azerbaijani opposition ahead of 2009 Referendum: "Our people do not need a king".
Photo: Azerbaijan Liberal Party*

¹⁷⁷ Ibid

¹⁷⁸ <http://bit.ly/14HuXZU>

¹⁷⁹ See the Constitution of Republic of Azerbaijan, available at <http://bit.ly/Uy7NQd>

¹⁸⁰ <http://bit.ly/ZsNzNM>

¹⁸¹ <http://bit.ly/1dXqDhs>

Further problems with 2009 constitutional reform

Other issues of concern to the Council of Europe, apart from the abolition of the two-term limit, include the extension of the term of the Milli Mejlis and the President in the case of military operations and changes concerning the local government bodies, in breach of the European Charter of Local Self-Government.¹⁸² Moreover, the Venice Commission believes that with the restrictions on the rights and freedoms guaranteed by the constitution in the current wording of the proposed amendment to Article 32(III), and bearing in mind the general context of media freedom and the activities of journalists in Azerbaijan, “there is a strong risk that this provision be implemented in a way contrary to Article 10 of the European Convention on Human Rights (ECHR).”

Amendments to Article 32 (III)¹⁸³ regarding the Right to personal immunity provide that “no one shall be followed, filmed, photographed, recorded, or subjected to any other similar actions without his or her knowledge or despite his or her disapproval, except for cases established by law.” The article opens to a wide interpretation of the right to privacy, which in turn could be used in practice to exclude unwelcome journalists from reporting on events of public interest.

According to Article 10 of the ECHR (Right to freedom of expression and information),¹⁸⁴ journalists and media in general should be free to inform and comment on issues of public interest. This applies to reporting on political figures to the extent that their activities or actions have a bearing on matters of general interest and may permit people to form an informed opinion on the candidates they have to vote for in the context of the exercise of their political rights.¹⁸⁵



Trial of bloggers Emin Milli and Adnan Hajizade, Baku 2009
Photo: RFE/RL

“What is at stake is not only the freedom of Adnan and Emin, but the freedom and well-being of all people in Azerbaijan”

In July 2009, young bloggers Emin Milli and Adnan Hajizade were physically attacked in a Baku restaurant. They were detained, interrogated, and brought into custody when they went to the police to complain about the attack, while their attackers were released. Milli and Hajizade were convicted in November 2009 of hooliganism and deliberately causing bodily harm, and sentenced to two-and-a-half and two years in custody, respectively. Following their conviction, in Novem-

¹⁸² See Press Release 161 (2009) of 2 March 2009 published by the Congress, “Congress Bureau calls for postponing referendum in Azerbaijan” and Press Release 218 (2009) of 16 March 2009, “Ian Micallef warns Azerbaijan against weakening its Constitution.”

¹⁸³ <http://bit.ly/Uy7NQd>

¹⁸⁴ <http://bit.ly/ZsNzNM>

¹⁸⁵ Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan, Venice Commission, Opinion no 518/ 2008 [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)010-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)010-e)

ber 2009 the Council of Europe reacted through Secretary General Thorbjorn Jagland's statement in which he expressed his concern over the harsh sentences handed down to the young bloggers. Jagland said the Azerbaijani authorities should critically review their attitude towards media and civil society and public criticism in general, and bring it in line with their obligations as a member of the Council of Europe and a party of the European Convention on Human Rights. The freedom of expression is a vital precondition of democracy. Without it there is no freedom, no creativity, no good ideas, no good solutions and no social progress. What is at stake is not only the freedom of Adnan and Emin, but the freedom and well-being of all people in Azerbaijan, said Jagland.

Eynulla Fatullayev's case: "an acid test"

"...It is getting late for the positive signs for which the international community is waiting. The release of Eynulla Fatullayev and other journalists who remain in prison is one such sign"

Mendes Bota (Portugal)

The trickiest issue to address is probably that of freedom of speech and freedom of expression, which has been analyzed in the recent report by the Institute for Reporters' Freedom and Safety. We welcome the release of several imprisoned journalists following the presidential pardon, but we regret that some remain in prison and the fate Mr Fatullayev is an acid test in this field. He should be released rapidly, as has been ordered by the Strasbourg Court of Human Rights.

Iwinski, Poland

Eynulla Fatullayev, editor-in-chief of *Realny Azerbaijan* and *Gundelik Azerbaijan* newspapers, and prior to that, deputy editor to Elmar Huseynov at *Monitor* magazine until Huseynov's murder in March 2005, was imprisoned in April 2007 on defamation charges, later to be accompanied by charges of terrorism, tax evasion, and incitement to hatred, for which he was convicted to a hefty cumulative sentence of eight and a half years' imprisonment.

Having failed to achieve justice at home, Fatullayev filed an appeal with the ECtHR. In April 2010,¹⁸⁶ the ECtHR declared Fatullayev's imprisonment illegal, ordered his immediate release and the payment of 27,822 Euro in damages. The court stated that the Azerbaijani government had violated his rights to freedom of expression, a fair trial, and presumption of innocence. Rather than releasing him, the authorities moved forward with an investigation into new charges of drug possession, for which Fatullayev was

¹⁸⁶ <http://bit.ly/192xh0F>

convicted in July 2010 and sentenced to an additional two and a half years in prison. Despite widespread international calls for the authorities to execute the ECtHR judgment and release Fatullayev from prison, they kept him in prison until May 2011, when he was finally released by presidential pardon after more than four years of wrongful imprisonment.

The death of a political prisoner, human rights defender and journalist

In the adopted resolution, the Assembly also deplored the death of Novruzali Mammadov, a researcher and editor-in-chief of the only Talysh-language newspaper, *Tolishi Sedo*, who died in prison in August 2009 and whose name was on the list of political prisoners drawn up by human rights organizations in Azerbaijan.



Novruzali Mammadov
Photo: family archive

On 17 August 2009, *Tolishi Sado* newspaper's 68 year-old editor-in-chief Novruzali Mammadov died mysteriously in the Ministry of Justice Penitentiary Services' Central Hospital due to negligence in providing him with necessary medical assistance. Since the government did not investigate the cause of Mammadov's death comprehensively, no one was held responsible. IRFS appealed to the government to conduct a parallel investigation into this death case; however, conditions to investigate this issue were never secured and in fact the government tried to disguise this death.

On 18 January 2009, Mammadov was put in "solitary confinement" in Prison #15, and as a result, developed serious health problems. He appealed to the court, and in March 2009, the court fulfilled his claim and issued a decision to immediately transfer him to a medical facility. However, the prison leadership ignored the court's decision and Mammadov's health deteriorated. On 28 July 2009, Mammadov's health became critical and he was transferred to the Penitentiary Services Central Hospital. However, he was not given the required treatment there either. Considering the seriousness of Mammadov's health problems, local organizations called for the editor-in-chief to be placed in a civilian hospital, and to invite a consultant medical expert through the Council of Europe to treat him. However, this was not permitted.

Tolishi Sedo newspaper editor-in-chief Mammadov's relatives – his wife Maryam Mammadova and son Emil Mammadov - filed a lawsuit against the Finance Ministry, the Justice Ministry's Penitentiary Services, the Chief Medical Office of the Justice Ministry, Prison #15 and the Penitentiary Service's Treatment Facility, for the journalist's death. The lawsuit was not fulfilled. Four complaints were submitted to the ECtHR in 2007 in connection with Mammadov's case.

“The trickiest issues to address”

The debate on 24 June 2010 called Azerbaijan's media freedom as one of “the trickiest issues to address.” In the adopted resolution 1750, the Assembly condemned the arrests, intimidation, harassment, and physical threats against journalists, as borne out by the judgment of the Court in the case *Fatullayev v. Azerbaijan*.

In the resolution, the Assembly once again expressed its concern over reported violations of basic freedoms such as freedom of assembly and freedom of the media. It recalled, in this context, the European Parliament resolution on freedom of expression in Azerbaijan of 17 December 2009 (P7_TA(2009)0120),¹⁸⁷ voicing concern about the deterioration of media freedom in the country.

What happened after the resolution?

The 2010 parliamentary elections did not meet international standards. The elections were marred by serious irregularities and further strengthened the Aliyev regime.

The following was the conclusion from the Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR):

“Parliamentary elections in Azerbaijan were characterized by a peaceful atmosphere and all opposition parties participated in the political process, but the conduct of these elections overall was not sufficient to constitute meaningful progress in the democratic development of the country, international observers said in a statement issued today.¹⁸⁸”

To conclude, no election in Azerbaijan has been called free and fair since the country's accession to the Council of Europe—and in fact since the adoption of the constitution in 1995.

Following the resolution, the Aliyev regime continued to crackdown on its critics and sought to control all spheres of public life. All forms of dissent has been under attack, whether from individuals, independent journalists, political and human rights activists, or NGOs. As for media freedom, the political, legal, and economic environments have remained distinctly inhospitable to independent media. Legal proceedings and lawsuits continued to be used as an indirect method of censorship.

¹⁸⁷ European Parliament resolution of 17 December 2009 on Azerbaijan: freedom of expression <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2009-0120&language=EN>

¹⁸⁸ <http://www.osce.org/odihr/elections/azerbaijan/75073>



The follow-up to the issue of political prisoners in Azerbaijan, Mr Christoph STRÄSSER (Germany, SOC), Rapporteur. Parliamentary Assembly Session January 2013. Photo: www.coe.int



The honouring of obligations and commitments by Azerbaijan -Presentation by: Mr Pedro AGRAMUNT Spain, Co-Rapporteur. Parliamentary Assembly Session January 2013. Photo: www.coe.int

Chapter Eight: “Go Ahead” for Repression

“Corruption; torture; no independent judiciary; impunity; political prisoners; restriction of the freedoms of assembly, association and expression; no respect for human rights, democracy or the rule of law; no separation of power – I could go on. The list is very long. Azerbaijan is still a state under authoritarian rule.”

de POURBAIX-LUNDIN (Sweden)

On 23 January 2013, the Assembly devoted an entire afternoon to debating two much-awaited reports on the country. Two critical resolutions drawn from those reports were put to a vote during the sixth sitting¹⁸⁹ of the Assembly.

¹⁸⁹ 2013 Ordinary session, sixth sitting report available at <http://assembly.coe.int/Main.asp?link=/Documents/Records/2013/E/1301231530E.htm>

The first report was by the Assembly's Monitoring Committee, assessing Azerbaijan's progress in meeting its membership commitments. The second report was dedicated to the issue of political prisoners in Azerbaijan, and was a golden opportunity for the Council of Europe to make it clear it would stand up for human rights and free expression in Azerbaijan.

The first resolution (later referred as Resolution 1917 (2013)¹⁹⁰), proposed recommendations regarding the honoring of obligations and commitments by Azerbaijan, as a member state of the Council of Europe and state party to the European Convention on Human Rights (ECHR). The recommendations were drawn from a report¹⁹¹ by PACE co-rapporteurs for Azerbaijan, Joseph Debono Grech and Pedro Agramunt, prepared following their country visits in April and November 2012.

The authors of the report expressed "growing concern with regard to the rule of law and respect for human rights." The report presented the status of implementation of commitments Azerbaijan made in 2001 and elaborated on limitations on freedom of expression and of assembly, the lack of access to public media, the fact that there was no separation of powers, fabricated charges against human rights activists and journalists, unfair trials, the systematic detention of political prisoners and prisoners of conscience, pressure on defense lawyers, and corruption and organized crime.

The second draft resolution focused on the issue of political prisoners in Azerbaijan, based on a 2012 report prepared by Rapporteur Christoph Strasser,¹⁹² in which he concluded that "the issue of political prisoners is still not resolved" by identifying more than 80 cases. The draft resolution called on Azerbaijan to speedily resolve the cases on Strasser's list, and take measures to ensure no future cases of political imprisonment. The last resolution¹⁹³ on political prisoners was adopted at the last report on of the PACE Committee on Legal Affairs on Azerbaijan, dating back to 2005.¹⁹⁴

The report stated in paragraph 11: "In the light of the commitments entered into and the assurances given by the Azerbaijani authorities that the issue would be dealt with to the Assembly's satisfaction by the autumn 2004 session, the Assembly cannot consider the issue of political prisoners to have been finally resolved."¹⁹⁵

¹⁹⁰ <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19451&Language=en>

¹⁹¹ Doc. 13084, 20 December 2012, The honouring of obligations and commitments by Azerbaijan, Monitoring Committee report, rapporteurs Pedro AGRAMUNT, Spain, EPP/CD and Joseph DEBONO GRECH, Malta, SOC available at <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19243&lang=en>

¹⁹² Provisional version, June 2012, Committee of Legal Affairs and Human Rights report: "The follow-up to the issue of political prisoners in Azerbaijan", prepared by Rapporteur Christoph Strässer http://www.assembly.coe.int/Communication/pressajdoc22_2012.pdf

¹⁹³ Resolution 1457 (2005) Follow-up to Resolution 1359 (2004) on political prisoners in Azerbaijan, <http://www.assembly.coe.int/Main.asp?link=http://www.assembly.coe.int/Documents/AdoptedText/ta05/ERES1457.htm>

¹⁹⁴ See Doc. 10564, report of the Committee on Legal Affairs and Human Rights, rapporteur: Malcolm Bruce, United Kingdom, Liberal, Democratic and Reformers' Group <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=10908&Language=en>

¹⁹⁵ Ibid

“We in the Parliamentary Assembly must take our own commitments seriously. We have committed ourselves to follow up the process, so we have a responsibility to do so,” Strasser said, endorsing his 2012 report.¹⁹⁶

Both reports sparked heated debate¹⁹⁷ at the sixth sitting:



Avaz Zeynally, political prisoner
Photo: Khural

“What is important is not what I think, or what you think, but the people who are in prison who are not being released.”

Rapporteur Strasser, Germany

“The reports are pre-election. (...), there are presidential elections this year, and the reports reflect the situation in the country. We probably did not pay enough attention to the freedom of media, assembly and association, but all the problems in those fields do not bode well for good elections. Azerbaijan is the only country in the Council of Europe to permit more than two consecutive terms as president. This is a difficult situation, so we should support the reports in this election year.”

Herkel (Estonia), Chairman of the Monitoring Committee



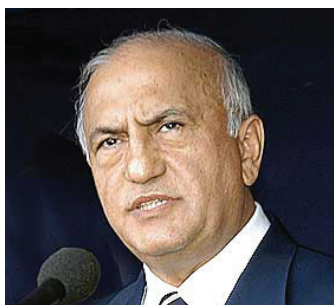
Farkhad Aliyev, political prisoner
Photo: RFE/RL

“If you want to send a serious warning to Azerbaijan about the respect of human rights, vote for the report of Mr Agramunt and Mr Debono Grech. If you do not want to endorse terrorists and Islamists, vote no to Mr Strasser’s report.”

Conde (Spain)

“In human rights, Azerbaijan’s record remains a cause for concern, including on press freedom – particularly state control of broadcast media – freedom of assembly, and limitations on the activities of NGOs. This seriously impedes the progress toward a truly free democratic society. The detention of activists and journalists is particularly problematic.”

Chisu (Canada)



Ali Insanov, political prisoner
Photo: AP

“We have to be extremely cautious if we are properly to evaluate these reports. Mr Strasser’s report uses the word “presumed”. Given the dictionary definition, it would be interesting to know how the word could mean “definite”. You have

¹⁹⁶ 2013 Ordinary session, sixth sitting report available at <http://assembly.coe.int/Main.asp?link=/Documents/Records/2013/E/1301231530E.htm>

¹⁹⁷ Ibid

changed something from being presumed into a definite state of affairs, Mr Strasser, and that cannot be right. It is a misuse of the English language, if that is what you intended.”

Mike Hancock (UK)

“We are doing our best to follow the monitoring procedures, which we respect, despite the fact that the Monitoring Committee report is very critical. I cannot agree with some points in the report, but we have to communicate and establish dialogue with the Monitoring Committee because it is our obligation as a member of the Council of Europe.”

Samad Seyidov, (Azerbaijan)

Following debates, a resolution on political prisoners drawn from Strasser’s controversial report was voted down, with 79 votes for, 125 against, and 20 abstentions. The other, broader resolution on Azerbaijan, voted through with a wide margin - with 196 votes for, 13 against and 16 abstentions - also highlighted the problem of political prisoners, concluding that, “The combination of the restrictive implementation of freedoms with unfair trials and the undue influence of the executive results in the systemic detention of people who may be considered prisoners of conscience.”

The adopted resolution called for the “full implementation” of basic freedoms including the right to freedom of expression (Article 10, ECHR), and the rights to freedom of peaceful assembly and freedom of association (Article 11, ECHR).

The resolution pointed to “violations of some laws, resulting in growing concern with regard to the rule of law and respect for human rights.” The Assembly was concerned over recently adopted amendments to the Criminal Code and the Administrative Code, which had increased penalties for the organizers of, and participants in, “unauthorized” gatherings.

Implementation update: The law on freedom of assembly was again amended, further increasing already harsh penalties for organizing or participating in un-sanctioned protests, and the maximum period of administrative detention was sharply increased.

The Assembly was alarmed about “the alleged use of fabricated charges against activists and journalists.” “The combination of the restrictive implementation of freedoms with unfair trials and the undue influence of the executive results in the systemic detention of people who may be considered prisoners of conscience,” read the resolution.

Implementation update: Since the resolution, there have been at least 14 new prisoners of conscience, including opposition candidates, journalists, pro-democracy activists and human rights defenders, Amnesty International reports.¹⁹⁸

With regard to freedom of expression, the Assembly urged Azerbaijan to “pursue efforts to elaborate a new law on defamation in co-operation with the Venice Commission,” “create the proper conditions for journalists to carry out their work and refrain from any kind of pressure,” stop “prosecution of journalists or others who express critical opinions,” “effectively investigate the murders of Elmar Huseynov and Rafiq Tagi and bring the perpetrators to justice,” “effectively investigate all cases of beatings reported by journalists and bring the perpetrators to justice.”

Implementation update: The government continued to use defamation and other criminal charges to intimidate and punish journalists and bloggers expressing dissenting opinions; at least 10 were detained or serving prison sentences at the time of publication. Impunity reigned, with 26 new attacks against journalists and a lack of progress in any of the previous hundreds of attacks, including two murders. Rather than fulfill Azerbaijan’s stated commitment to decriminalize defamation in 2012, on 4 June 2013, President Aliyev signed into law a series of amendments that extended criminal defamation provisions to online content.

With regard to freedom of assembly, the Assembly called on Azerbaijan to “find a compromise solution to allow protest actions in some areas of Baku city center, complying with security requirements and acceptable for both the organizers and the authorities,” “refrain from using disproportionate police force against peaceful protesters;” “refrain from the restrictive use of certain articles of the Criminal Code, in particular Articles 221 and 233, against participants in peaceful, albeit unauthorized, demonstrations.”

Implementation update: On 10 March 2013, riot police used tear gas, rubber bullets and water cannons to disperse protesters in downtown Baku. Although they brought one out, they did not resort to using the LRAD, or Long-Range Acoustic Device, which can blast a pain-inducing 150-decibel beam of sound to deter unruly crowds.¹⁹⁹

With regard to freedom of association, the Assembly called on the Azerbaijani government to “review the law on NGOs with a view to addressing the concerns formulated by the Venice Commission,” improve and facilitate the registration procedures for international NGOs, and “create an environment conducive for NGOs to carry out their activities,” including those expressing critical opinions.

¹⁹⁸ Amnesty International document, Azerbaijan starts presidential election campaign with at least 14 prisoners of conscience <http://www.amnesty.org/en/library/asset/EUR55/006/2013/en/d11746f1-3f1e-4ea2-972b-e3cda1a38309/eur550062013en.html>

¹⁹⁹ See, inter alia, RFE/RL report, Brutal Police Crackdowns in Azerbaijan, Courtesy of Western-Made Weapons <http://www.rferl.org/content/azerbaijan-brutal-crackdown-western-weapons-lrad/24927720.html>

Implementation update: Following the resolution, the authorities embarked on an “open season” against NGOs and right defenders. On 11 March 2013, President Aliyev signed into law a series of regressive amendments that severely restrict the ability of independent NGOs to operate.²⁰⁰ The arbitrary denial of registration for NGOs has been a source of longstanding concern. Foreign NGOs are banned from operating in the country unless they are registered and have an appropriate agreement on their activities with the Azerbaijan Ministry of Justice.²⁰¹



Trial of Ilgar Mammadov, Baku 2013.
Photo: IRFS

²⁰⁰ <http://bit.ly/10zUraz>

²⁰¹ Amnesty International report, 2011 http://www.amnesty.eu/content/assets/Doc2011/azerbaijan_report.pdf



*Riot police escort a girl after she shouted “freedom” during an opposition rally in Baku. 17 April, 2011.
Photo: REUTERS/Irada Humatova*

Part Three:

Challenge for the Commissioner



Thomas Hammarberg
Photo: www.coe.int



Nils Muižnieks
Photo: www.coe.int

The Commissioner for Human Rights is an independent institution within the Council of Europe, which works to promote the awareness of and respect for human rights in 47 Council of Europe member states.

As laid out in the resolution (99) 50²⁰² the Commissioner, is inter alia, mandated to foster the effective observance of human rights, and assist member states in the implementation of Council of Europe human rights standards.

Another area of the Commissioner's mandate is to identify possible shortcomings in the law and practice of member states concerning the compliance with human rights as embodied in the instruments of the Council of Europe, promote the effective implementation of these standards by member states and assist them, with their agreement, in their efforts to remedy such shortcomings.

As this report shows, ensuring respect for human rights in Azerbaijan is the most difficult task for the Commissioner to fulfill.

²⁰² Resolution (99) 50 On the Council of Europe Commissioner for Human Rights (*adopted by the Committee of Ministers on 7 May 1999 at its 104th Session*) <https://wcd.coe.int/ViewDoc.jsp?id=458513&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

There is no political will among the Aliyev regime to cooperate with the Council of Europe Commissioner for Human Rights. For example, this is clearly demonstrated by the Azerbaijani authorities' systematic failure to implement recommendations contained in the Commissioner's reports. It was also evidenced, inter alia, by the promulgation by the President of Azerbaijan, Ilham Aliyev, of amendments extending the application of criminal defamation provisions to online expression on 4 June 2013 in spite of the fact that Commissioner Muižnieks had explicitly called on President Aliyev to refrain from signing those draconian amendments into law. Further, the amendments clearly contradict Azerbaijan's commitments and obligations relating to the decriminalization of defamation and freedom of expression in general.

None of the recommendations contained in the Commissioner's reports related to fundamental freedoms have been implemented. There is no sign of political will by the Aliyev regime to ensuring that future decision-making occurs in accordance with the recommendations of the Council of Europe Commissioner for Human Rights.

“Urgent action is needed here”

The first assessment report of the Commissioner in relation to Azerbaijan came out in 2008 following Commissioner Thomas Hammarberg's visit from 3 to 7 September 2007. In relation to fundamental freedoms, Hammarberg wrote in his report:

“... the bottom line is that nobody should be deprived of his or her liberty on account of opinions expressed. Urgent action is needed here.”

Hammarberg considered the decriminalization of defamation as “a matter of urgency,” referring to President Aliyev's call for abandoning the use of criminal provisions in matters of defamation back in 2005, which had not been respected. The Commissioner also wrote about “abusive or unfair imprisonment of journalists” and issues with the access to information, which he believed constituted a “structural problem.”

As for freedom of association and peaceful assembly, the Commissioner wrote that this area also needed improvement. The Commissioner mentioned restrictions of the right to peaceful assembly and called on the government to bring current legislation in line with Council of Europe standards “without delay.” The Commissioner pointed to problems with the registration of NGOs and called on the authorities to simplify the procedures for their registration.

2010: Freedom of expression curtailed

The main conclusion from Hammarberg's second report,²⁰³ released on 29 June 2010 was, "Freedom of expression is curtailed in Azerbaijan today - major improvements are needed."

The report, which followed Hammarberg's visit to Azerbaijan from 1 to 5 March 2010, elaborated on cases of threat, harassment, and violence against journalists or human rights activists which had not been properly investigated. "The authorities must better protect, from any sort of violence to journalists and others who may express critical opinions. The perpetrators of such acts should be adequately punished."

Hammarberg noted that "anyone imprisoned because of views or opinions expressed, including Eynulla Fatullayev, Emin (Milli) Abdullayev and Adnan Hajizadeh, should be released immediately." In addition, the Commissioner underscored that the decriminalization of defamation was needed to bring the legislation in conformity with European standards, and recommended that the authorities allow the BBC, Radio Liberty/Radio Free Europe, Voice of America and Europa Plus radio stations to resume broadcasting on FM waves.

The Commissioner acknowledged "the willingness of the authorities to take steps" to facilitate the registration of NGOs, but was concerned about "recent legislative changes which could limit the freedom of association." "Authorities should refrain from controlling activities of NGOs in an unduly strict manner. Requirements and procedures for registration, including re-registration of religious communities, must be simple in order not to deter associations from registering."

2011: "Worrying clampdown on journalists and human rights activists"

In follow-up to his June 2010 report,²⁰⁴ the Commissioner undertook another visit to Azerbaijan, which revealed a "worrying clampdown on journalists and human rights activists." Hammarberg concluded that "freedom of expression, association, and peaceful assembly have encountered serious setbacks in Azerbaijan. Urgent measures must be taken to uphold these fundamental human rights."

One year after the publication of the 2010 report, the Commissioner regretted to note that most of the recommendations he had made with regard to these areas had not been implemented. In some cases, steps taken by the authorities had even run counter to Azerbaijan's human rights obligations.

Hammarberg expressed particular concern over "unjustified or selective criminal prosecution of journal-

²⁰³ Strasbourg, 29 June 2010 CommDH (2010)21 <https://wcd.coe.int/ViewDoc.jsp?id=1642017>

²⁰⁴ Ibid

ists or critical opinion makers.” “Measures should be taken to release immediately all persons imprisoned because of views or opinions expressed.”²⁰⁵ He once again stressed in his report that an essential step for the protection of freedom of expression was to decriminalize defamation.

Furthermore, the Commissioner noted concerned over reports on “difficulties created by authorities to hinder activities of several national and international NGOs.” He was particularly worried about the recent demolition of a building in which several human rights organizations had their offices.²⁰⁶

Another source of the Commissioner’s concern related to the wave of arrests of activists and political opponents in connection with protests held in Baku in March and April 2011,²⁰⁷ following “trials whose conformity with human rights standards has been called into question.” The Commissioner urged the Azerbaijani authorities to fully respect the right to freedom of peaceful assembly, in accordance with the case-law of the European Court of Human Rights. “Freedom of expression, association and peaceful assembly are indispensable principles of a democratic society. Effective measures must be taken by the Azerbaijani authorities to uphold them,” Hammarberg concluded.

Urgent need for greater freedom of expression and assembly in Azerbaijan

Journalists, bloggers, activists and other independent thinkers suffer severe limitations on their freedom of expression in Azerbaijan. This was a conclusion by the new Commissioner, Nils Muižnieks, following his three-day visit to Azerbaijan in May 2013. The findings from the Commissioner’s mission were reflected in his report,²⁰⁸ in which the Commissioner sent a strong signal to the Azerbaijani government about the importance of ensuring fundamental freedoms in the run up to the October 2013 presidential election.

The Commissioner’s report, made public on 6 August 2013, made it clear that Azerbaijan had a lot to do ensure freedom of expression and assembly. However, the Azerbaijani government’s comments on the report once again demonstrated a lack of political will to guarantee these fundamental freedoms. Traditionally, instead of acknowledging serious and sustained rights abuses and showing commitment to hold the perpetrators accountable, the Azerbaijani government rejected any criticism and stated that the report lacked “balance.”

“All necessary conditions are created in the country so that media can freely operate,” stated the Azerbaijani government in comments on the Commissioner’s report.

²⁰⁵ Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Azerbaijan from 22 to 24 May 2013 <http://bit.ly/12WY2oJ>

²⁰⁶ <http://bit.ly/oGWCNi>

²⁰⁷ <http://bit.ly/16k75z2>

²⁰⁸ <http://bit.ly/17PK07S>



*Azerbaijan National Stamp for the 60th COE Anniversary. Ian Micallef, President A.I. of the Congress. 10/15/09
Photo: www.coe.int*



Brutal crackdown on peaceful protesters in Baku. Photo: IRFS

Part Four:

The Venice Commission: A box-ticking exercise



Address by Elmar Mammadyarov, Minister for Foreign Affairs of Azerbaijan at the ceremony of the 20th Anniversary of the Venice Commission. 6/5/10. Photo: www.coe.int

The position of my country has always been clear and fair with regard to the implementation of the commitments it made on accession to the Council of Europe. The political will for full implementation of those obligations and commitments has always prevailed. We should all realise that the development of democracy, the rule of law and human rights is a continuous process.

On our legislative obligations, I especially underline the fruitful co-operation between Azerbaijan and the Venice Commission in drafting a new law of defamation.

Huseynli, PACE member, Azerbaijan

Perhaps since accession, my country has successfully co-operated with the Venice Commission on bringing its legislation into full compliance with European standards.

Hajiyeva, PACE member, Azerbaijan

Since Azerbaijan's accession to the Council of Europe, at least seven laws have been amended including broad provisions that allow for arbitrary interference with the rights to freedom of expression, association, and assembly, despite the legally binding decisions of regional and universal human rights bodies in this regard. As a result, the space for political opposition and other forms of dissent is rapidly shrink-

ing, as well as for the operations of non-governmental organizations, in particular those critical of the authoritarian practices of the Aliyev regime.

“The freedom of expression of an association cannot be subject to the direction of public authorities”

The Aliyev regime’s control over civil society intensified when, in July 2009, legislative amendments²⁰⁹ made it mandatory for foreign NGOs to register on the basis of an agreement between the country they represent and Azerbaijan. In March 2011, a decree²¹⁰ was issued containing rules governing the registration of foreign NGOs and negotiations with them on required agreements, leaving the Ministry of Justice with broad and discretionary power in interpreting and defining the above-mentioned agreements.

In 2009, two separate reports of the Parliamentary Assembly expressed concern about the situation of NGOs in Azerbaijan. In its report on “The state of human rights in Europe and the progress of the Assembly’s monitoring procedure,” the Parliamentary Assembly expressed concern about the fact that “legal restrictions on freedom of association have recently been introduced in Azerbaijan.”²¹¹ The Monitoring Committee’s report on “The functioning of democratic institutions in Azerbaijan”²¹² raised the similar concern.

The Commission was therefore mandated to assess the compatibility of the 2009 NGO legislation with Azerbaijan’s international human rights obligations.

In Opinion 636 adopted in 2011,²¹³ the Venice Commission states that both the 2009 amendments and the 2011 decree unfortunately overturn previous efforts to meet the requirements of international standards. With regard to NGO registration, which in many countries is a rather formal procedure, the 2009 amended version of the law on NGOs and the 2011 decree, added further complications to an already complicated and lengthy procedure. The requirement for international NGOs to create branches and representatives and have them registered is of itself problematic.

As far as the liability and dissolutions of NGOs are concerned, the law on NGOs poses problems of compatibility with Article 11 of the ECHR. There must be convincing and compelling reasons justifying the dissolution and/or temporary forfeiture of the right to freedom of association. Such interference must meet a pressing social need and be proportionate to the aims pursued. A decision not to reach an agreement with a foreign NGO must not only be prescribed by law but furthermore such a decision must also pursue a legitimate aim and be necessary in a democratic society. To condition the views, activities and conduct of an NGO before allowing it to obtain the legal personality necessary for its operation, goes against the core of the values underlying the protection of civil and political rights. It clashes with the whole ideological framework underlying democracy such as pluralism, broadmindedness and tolerance.

The right to freedom of association is intertwined with the right to freedom of thought, conscience, religion, opinion and expression. It is impossible to defend individual rights if citizens are unable to organize around common needs and interests and speak up for them publicly. The freedom of expression of an association cannot be subject to the direction of public authorities, unless in accordance with permis-

²⁰⁹ <http://bit.ly/af53U>

²¹⁰ <http://bit.ly/1e4NDey>

²¹¹ <http://bit.ly/14HoVOB>

²¹² <http://bit.ly/14HuXZU>

²¹³ Mutatis mutandis see: Opinion on the Compatibility with human rights standards of the legislation on non-governmental organizations of the Republic of Azerbaijan, 19 October 2011 pp 19-21, p § 117-125 & ANNEX

sible restrictions ascribed by law and necessary in a democratic society for narrowly and clearly defined purposes. Only indisputable imperatives can justify interference with the enjoyment of freedom of association under the ECHR.

The Venice Commission reiterates that it is required of the Republic of Azerbaijan as a party to the ECHR and the ICCPR to take steps to give effect to the civil and political rights it has undertaken to ensure to all individuals within the territory of Azerbaijan. A failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the State. The Venice Commission recalls that the way in which the national legislation enshrines freedom of association and its practical application by the authorities reveals the state of democracy in the country concerned.

Action in response:

On 11 March 2013, President Aliyev signed into law a series of regressive amendments that severely restrict the ability of independent NGOs to operate.²¹⁴ The changes to the law on NGOs, law on grants, and law on freedom of religion, which were adopted by Parliament on 15 February 2013, stipulate that NGOs receiving donations of a value greater than 200 AZN without a formal agreement could face massive fines and confiscation of property. These amendments were rushed through Parliament without consultations with independent civil society organizations or relevant bodies of international organizations such as the European Commission for Democracy through Law (Venice Commission). The amendments make it possible for the government to quickly and easily shut down critical NGOs. The changes took effect in early May 2013.

“The Law ensures too broad a discretion for State authorities and provides for numerous cases of automatic prohibition of holding an assembly”

“We consider it is crucially important that the Parliament adopts the revised law on freedom of assembly in time before the forthcoming presidential elections due in four months and a half. Moreover, once the revised law is adopted, the authorities will have to immediately focus on its implementation, on awareness-raising measures and provide adequate training to the competent authorities. Keeping in mind the violent dispersal of peaceful rallies in 2005, we are particularly insisting on the importance of the due implementation of the revised law.”

Report on the functioning of democratic institutions in Azerbaijan, 6 June 2008²¹⁵

²¹⁴ <http://bit.ly/10zUraz>

²¹⁵ Doc. 11627, Report, The functioning of democratic institutions in Azerbaijan <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=12114&Language=en>

Misinterpretation and misapplication of some provisions of the Law on Freedom of Assembly has resulted in the fact that citizens have almost become dependent on the authorities in exercising their right to the freedom of assembly.

Take Article 5 of the law, which says *“A person or persons organizing any assembly enumerated in Article 3 of the present Law have to notify in advance the relevant body of executive power in written. A notification has to be submitted, as a rule, 5 days prior to the day of convening the intended assembly for coordinating its time and venue...”* However, in practice, demonstration organizers are required to get permission rather than simply provide notification of the relevant state agencies before proceeding with their assemblies.

Although there is a Baku Mayor's Office-approved list of locations available for peaceful assemblies (both in the city center and in the suburbs), any request from critical groups to stage a peaceful gathering in or close to downtown is rejected. As a rule, opposition or any other groups that express dissent are often offered the same remote location, on the outskirts of Baku.

Such restriction on freedom of peaceful assembly could not go unnoticed by the Assembly, which reacted with two resolutions, 1358 (2004)²¹⁶ and 1614 (2008),²¹⁷ where PACE members warn: *“freedom of peaceful assembly still suffers repeated and unacceptable restrictions...,”* and *“...limitations to the right to freedom of assembly and association, are matters of great concern and are considered by the Assembly as inadmissible in a Council of Europe member state.”*

On 5 May 2006, Ramiz Mehdiyev, Head of the Administration of the President of the Republic of Azerbaijan, requested the opinion of the Venice Commission on the “Law on Freedom of Assembly in Azerbaijan” adopted in November 1998.

In the “Opinion on the Law on Freedom of Assembly in Azerbaijan” adopted in 2006,²¹⁸ the Venice Commission concluded that the law “present[s] certain substantial shortcomings” and “the philosophy of the Law should be changed.”

It is important that improvements in the text of the Law be coupled with progress made in its implementation, which may justify awareness-raising measures and adequate training for the competent authorities so as to avoid too a restrictive reading of the Law. Indeed the way in which the Law is interpreted and implemented is of great significance in terms of its compliance with international human rights standards.²¹⁹

²¹⁶ <http://bit.ly/14NODvf>

²¹⁷ <http://bit.ly/1b8JFAC>

²¹⁸ Mutatis mutandis see Opinion no. 384 / 2006 on the Law on Peaceful Assembly <http://bit.ly/15YDuXV> Strasbourg, 25 October 2006

²¹⁹ Ibid

Action in Response:

No matter how strict the measures were before, it was not until the introduction of heavy legal sanctions²²⁰ for the organization of and participation in unsanctioned public gatherings that the number of such gatherings dropped sharply.

The new provisions adopted on 14 May 2013²²¹ extend the permitted period of administrative detention for many offences, including those relating to the expression of dissent. The penalty for “organizing an unauthorized demonstration” (Article 298 of the Code on Administrative Offences), for example, has been increased from 15 to 60 days. The penalty for “disobeying the police” was increased from 15 to 30 days (Article 310 of the Code on Administrative Offences).

This move further limits the chances for Azerbaijani citizens to exercise their right to freedom of assembly. No protests have been sanctioned in the downtown Baku since 2006, leading many to feel that they have no choice but to participate in unsanctioned protests. In November 2012, amendments were made²²² that exorbitantly increased the administrative fines for those participating or organizing unsanctioned protests. For example, the maximum fine for participating in unsanctioned public gatherings was increased from 955 EUR to 7,600 EUR.

In response to November 2012 amendments, in its resolution No.1917 (2013),²²³ PACE stated: *“Recently adopted amendments to the Criminal Code and the Administrative Code, which have increased penalties for the organisers of, and participants in, “unauthorised” gatherings, raise concern. Considering the authorities’ ongoing blanket ban on protests in the Baku city centre, these amendments are likely to have a further negative impact on freedom of assembly and freedom of expression. The restrictive use of certain articles of the Criminal Code, in particular Articles 221 and 233, against participants in peaceful, albeit unauthorised, demonstrations, is another matter of concern.”*

²²⁰ <http://bit.ly/1b8wWxC>

²²¹ Azerbaijan: New legislative amendments further erode rights to freedom of expression and peaceful assembly <http://bit.ly/Z0rGHK>

²²² <http://legislationline.org/topics/country/43/topic/15>

²²³ <http://bit.ly/15THtfg>

Part Five:

Azerbaijan in the mirror of the European Court of Human Rights

As a matter of international law, Azerbaijan is obliged to respect and protect all of the human rights enumerated in the treaties it has acceded to or ratified. That duty extends across all relevant bodies of government and parliament. The judiciary, for its part, is expected to take the country's international human rights obligations into account. In order to help ensure that these duty-bearers respect their obligations, various systems of international oversight have been put in place. The best known of these is the European Court of Human Rights – the body of judges that deals with complaints under the European Convention on Human Rights.

The European Court of Human Rights (ECtHR) is an international court set up in 1959.²²⁴ It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights (ECHR).²²⁵

The relationship between Azerbaijan and the ECtHR illustrates why there is an undeniable need for a human rights courts operating over and above states. Azerbaijan has been no stranger to Strasbourg since Opinion No. 222 was issued in 2000 and the country became a member of the Council of Europe in 2001. Since 15 April 2002, (the date of the Convention's entry into force with respect to Azerbaijan), the ECtHR has issued 72 judgments²²⁶ against Azerbaijan, finding at least one violation in more than 99 percent of these cases; there has only been one case in which the Court identified no violation.

In total, the Court has adopted more than 250 decisions (judgments, decisions, and resolutions on execution) on Azerbaijan, including 140 judgments, 76 decisions, four resolutions, and 21 communicated cases.²²⁷

Forty-seven of these cases (30 judgments and 17 decisions) are related to violations of the fundamental freedoms of expression, association and peaceful assembly provided by Article 10 and 11 (and/or in conjunction with Article 14) of the Convention. Three cases related to the above-mentioned fundamental freedoms were being communicated at the time of publication.

Article 10 of the ECHR: Freedom of Expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as

²²⁴ See more at http://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf

²²⁵ <http://bit.ly/ZsNzNM>

²²⁶ <http://bit.ly/1837g0B>

²²⁷ <http://bit.ly/14Eo0hC>

are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In 18 judgments, the Court found violations of Article 10. Particularly, while the Court found breaches of the first part of Article 10 (10.1) in all of these cases, the Court also found breaches of the second part of Article (10.2) in eight of them.

Eynulla Fatullayev v. Azerbaijan

The case of Eynulla Fatullayev particularly stands out because of the authorities' persistent targeting of him in the face of widespread international condemnation, including an ECtHR judgment in his favor. Fatullayev was the editor-in-chief of *Realny Azerbaijan* and *Gundelik Azerbaijan* newspapers, and prior to that, the deputy editor to Elmar Huseynov at *Monitor* magazine until Huseynov's murder in March 2005. Following the murder, Fatullayev refused to cease his investigation into who had killed Huseynov, despite his family receiving threats.

In April 2007, he was convicted on criminal defamation charges and sentenced to two and a half years in prison, on the basis of an article he had written and some postings attributed to him in an Internet forum which challenged the government's presentation of facts related to the 1992 Khojali massacre. In October 2007, Fatullayev was convicted on charges of supporting terrorism, inciting hatred, and tax evasion, on the basis of an article he had written criticizing Azerbaijan's foreign policies. He was given a cumulative prison sentence of eight and a half years, including the previous defamation conviction.

Having failed to achieve justice at home, Fatullayev and his legal team filed an appeal with the ECtHR. While Fatullayev was still in prison, in December 2009 prison officials claimed to find heroin in his clothing in his jail cell. He was charged with drug possession. Many local and international rights groups considered the new charge to be politically motivated and intended to keep him in prison despite the then-expected ECtHR judgment regarding his previous convictions.

In April 2010,²²⁸ the ECtHR declared Fatullayev's imprisonment illegal, and ordered his immediate release and the payment of 27,822 Euro in damages. The court stated that the Azerbaijani government had violated his rights to freedom of expression, a fair trial, and presumption of innocence. Rather than

²²⁸ <http://bit.ly/192xh0F>

releasing him, the authorities moved forward with the investigation into the drug possession charges, for which Fatullayev was convicted in July 2010 and sentenced to two and a half years in prison. Despite widespread international calls for the authorities to execute the ECtHR judgment and release Fatullayev from prison, they kept him in prison until May 2011, when he was finally released by presidential pardon after more than four years of wrongful imprisonment.

The Azerbaijani government said the decision was fully executed. As reported by the APA news agency, Azerbaijan's delegate to the ECtHR, Chingiz Asgarov, said in April 2011:²²⁹

"The Azerbaijani government's position is that the European court judgment has been fully implemented. Two decisions passed by the Azerbaijani Supreme Court concluded that according to the ECHR judgment, the criminal case against Fatullayev should be terminated and he should be released. The Supreme Court executed the judgment."

Mahmudov and Agazadeh v. Azerbaijan²³⁰

Rovshan Mahdumov and Yashar Agazadeh were the chief editor a journalist of the "Muxalifet" newspaper. In an April 2003 issue, the newspaper published an article titled "Grain Mafia in Azerbaijan," which wrote about the mafia in a certain segment of the agricultural sector and linked the mafia to a well-known public figure. Following the public figure's criminal complaint for the defamatory and insulting manner in which the article referred to him, the District Court convicted the two applicants for defamation under articles 147.1 and 148 of the Criminal Code, and sentenced both defendants to five months' imprisonment. The Court of Appeals and the Supreme Court upheld the judgment.

Before the ECtHR, the applicants complained that their conviction following the publication of a newspaper article had not been fair and had amounted to unjustified interference with their right to freedom of expression. The government argued that the applicants' purpose was not to raise a public debate, but to undermine the public figure's reputation. It further argued that the article contained no value judgments and made untrue factual statements.

The Court held unanimously that there had been a violation of Article 10 (freedom of expression) of the European Convention on Human Rights concerning the applicants' conviction for defamation of a politician and well-known expert on agriculture.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants, jointly, 1,000 EUR in respect of non-pecuniary damage, and EUR 925 for costs and expenses. Although the compensation required by this judgment was paid, the general measures stated therein were not taken by the govern-

²²⁹ <http://bit.ly/1an7GAP>

²³⁰ bit.ly/1573yAq

ment. As such, this judgment issued in relation to freedom of expression read that a journalist must not be given a criminal penalty over defamation, and the government must make legislative amendments to eliminate criminal liability for defamation. However, although several years have passed since the ruling, the government has failed to decriminalize defamation.

The Council of Europe Committee of Ministers was supervising the adoption of general measures for the full execution of the judgments adopted by the European Court of Human Rights in the cases of *Mahmudov and Agazade v. Azerbaijan* and *Fatullayev v. Azerbaijan*. In its last decision adopted on 8 June 2011,²³¹ the Committee of Ministers invited the authorities to provide detailed information in this respect, including how the requirements of the European Convention on Human Rights and the case law of the Court had been taken into account in the process of decriminalizing defamation.

Article 11 of ECHR: Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

In 23 judgments, the Court found violations of Article 11. Accordingly, in 16 judgments, the Court found breaches of the first part of Article 11 (11.1), as well as breaches of the second part of Article (10.2) in 16 of them.

In executing judgments related to freedoms of assembly and association, the Azerbaijani government failed to fulfill its obligation to take general measures. As such, although the government did pay the compensation determined by the Court, it must be noted that the obligation to take individual measures were not fully executed.

For example, the government fulfilled its obligation to take individual measures required by the judgments in the cases "*Ramazanova and others v. Azerbaijan*,"²³² "*Nasibova v. Azerbaijan*,"²³³ and "*Ismayilov v. Azerbaijan*"²³⁴ by registering the NGOs named by the applicants.

²³¹ <http://bit.ly/1b144Hy>

²³² bit.ly/17okrIW

²³³ bit.ly/1flpsoC

²³⁴ bit.ly/17IDo10

However, in the case *“Aliyev and others v. Azerbaijan,”*²³⁵ the obligation to take individual measures has not been fulfilled. Furthermore, despite the Court’s judgment, the NGO “Azerbaijan Lawyers Forum” has not yet been registered by the state. Also, the individual measures shown in the judgment in the case *“Society for Conservation of Nature and Israfilov v. Azerbaijan,”*²³⁶ were not fully taken either. The complaint was against the illegal liquidation of the “Society for Conservation of Nature” Public Association; the government formally restored the registration of the organization, but did not give back its assets, which indicates that the judgment was not executed fully.

In its four judgments related to freedom of association, the Court defined certain general measures such as:

“The Court reiterates that the exceptions to freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a “pressing social need”; thus, the notion “necessary” does not have the flexibility of such expressions as “useful” or “desirable”... “required to be taken by the government.”²³⁷

The government of Azerbaijan has not fulfilled this measure, and in a similar case canceled the official registration of the Election Monitoring and Democracy Studies Center in 2008.

Conclusion

Despite the authoritative nature of ECtHR judgments, the authorities have failed to guarantee fast and unconditional implementation of Court judgments and ensure that future decision-making occurs in accordance with them.

This is because domestic institutions that have a primary role in ensuring respect for Strasbourg judgments - be they Azerbaijani parliament, Milli Mejlis, the executive or the judiciary - are dependent on the President and his administration. The pressure that Azerbaijan faces from Strasbourg often comes too little and too late and is not a viable engine for change in the face of over 117 cases.

As this report shows, there is an obvious lack of political will to guarantee respect for human rights in Azerbaijan. Until domestic institutions are independent to respond to judgments on their own, or become responsive to pressures from domestic civil societies and the international community, ECtHR judgments will not be fully executed.

²³⁵ bit.ly/17okrIW

²³⁶ bit.ly/192x79v

²³⁷ Case of *Tebietli Muhafize Cemiyeti and Israfil v. Azerbaijan*



*The Third Summit of Heads of State and Government of the Council of Europe in Warsaw, 16 - 17 May 2005.
Photo: www.coe.int*

Conclusion

The whole point of regional cooperation in Europe is the guarantee of minimum standards of human rights protection for people living here, respect for the rule of law, and the promotion of genuine democracy.

But not in Azerbaijan – officially a European country, as far as the Council of Europe is concerned – but unrecognizable as such from a human rights perspective.

Council of Europe member states have undertaken to respect fundamental freedoms. Despite these binding obligations, some member states are continuing to demonstrate authoritarian tendencies, particularly in persecuting any form of dissent. Azerbaijan is in particularly serious and constant breach of its binding and fundamental commitments to ensure freedoms of expression, assembly and association. IRFS states that all three fundamental freedoms have been curtailed in recent years, and particularly this year in connection with the presidential election.

As this report shows, despite the government's increasingly hostile attitude, the Parliamentary Assembly's scrutiny of human rights issues in Azerbaijan keeps them on the international agenda, and yields some positive results – such as the release of many of the political prisoners included on the special rapporteurs' list.

IRFS considers the Council of Europe, in particular, the Parliamentary Assembly, to have a continuing and key role to play in the effort to ensure respect for and protection of the human rights of Azerbaijani citizens. Preventing further violations of human rights and fundamental freedoms of Azerbaijani citizens should remain a high priority for the Council of Europe for the foreseeable future.

To that end, IRFS calls on the Parliamentary Assembly to ensure that relevant committees - including the Committee on Legal Affairs and Human Rights and the Monitoring Committee - increase efforts to monitor and hold the Azerbaijani government accountable for its human rights practices and for implementation of its commitments to the Council of Europe. These committees should be mandated to re-appoint a special rapporteur tasked with examining the situation of political prisoners in Azerbaijan, who should be provided with sufficient resources and political support to monitor the situation and visit the country, to coordinate and work effectively with other actors, including the PACE Co-rapporteurs on Azerbaijan, and to present periodic reports to the Assembly. The Assembly should take concrete steps to ensure that Azerbaijan is held accountable for cooperating with the special rapporteur.

IRFS calls on the Council of Europe as such, as well as individual member states, not to turn a blind eye to the human rights crisis in Azerbaijan and denounce the serious and persistent breaches of fundamental human rights and freedoms in this country.

IRFS condemns the authorities of Azerbaijan for having unjustifiably failed to fulfill Azerbaijan's human rights obligations before the Council of Europe.

IRFS calls on the Assembly to take a tougher line with member states that fail to fulfill obligations. If member states are allowed to get away with blatant violations and fail to comply with the Council of Europe rules and treaties the organization, as such, loses both respect and influence.






Institute for Reporters'
Freedom and Safety

info@irfs.org

www.irfs.org

 [@IRFS_Azerbaijan](https://twitter.com/IRFS_Azerbaijan)

Tel. (+994 12) 408 75 30