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Implementation of Resolution 1358 (2004) on the functioning of democratic institutions in Azerbaijan

Report

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

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

Summary

This report takes stock of the implementation of Resolution 1358 (2004) adopted by the Assembly in January 2004. Relations between the Assembly and the Azerbaijani authorities are characterised by a climate of co-operation and confidence, Azerbaijan achieved progress in respecting its obligations and commitments, the most symbolic of these being the release of political prisoners and alleged political prisoners.

That being said, a number of difficulties remain, and a number of reforms are being deferred. The report proposes that the Assembly call on Azerbaijan to take appropriate measures to remedy defaults which became apparent during the last Presidential elections, sanction abuses perpetrated by the authorities during events which followed, and facilitate the proper functioning of democracy in this country.

The protection of political activists, their supporters and families should also be guaranteed. Reform of the judicial system should be continued and assistance to refugees, displaced persons and asylum-seekers increased.

I. Draft resolution

1. Since Mr Ilham Aliyev was elected President of the Republic in October 2003, the new government has embarked on a series of domestic reforms that are essential if Azerbaijan is fully to honour its obligations and commitments as a Council of Europe member state. With regard to foreign affairs, it has adopted a resolutely pro-European national independence policy. However, tensions within the government can be observed, consequently current reforms do not progress as quickly as might have wished the President.

2. It will be remembered that the Assembly gave the newly elected President an opportunity to demonstrate his commitment to Europe's democratic principles and values. It considers that, nearly a year after this election, there are a number of positive signs, for example in the form of four presidential pardon decrees, and notes that a number of reforms concerning pluralist democracy, the rule of law and respect for human rights are under way. It particularly welcomes the good climate of co-operation and trust that prevails between the Assembly and the Azerbaijani authorities.

3. Despite the fact that Azerbaijan has declared that it favours a peaceful solution to the situation in Nagorno-Karabakh, which was the main reason it was invited to become a member of the Council of Europe at the same time as Armenia, the Assembly cannot but observe that no tangible progress has been made over the past year either in the direct negotiations between the Presidents of the two countries, which are still taking place, or within the Minsk Group.

4. The Assembly acknowledges that Azerbaijan has made some progress in honouring its obligations and commitments since Resolution 1358 (2004). It considers, however, that this progress is not adequate. It therefore encourages the government and parliament to aim at settling the outstanding issues mentioned below and follow up the recommendations below.

5. In particular, the Assembly notes with concern that, despite the requests made in Resolution 1358 (2004):

i. transparency of the entire electoral process has still not been satisfactorily ensured, in particular by means of improvements in the performance of the election administration, and there has still been no official recognition of the serious fraud that marred the presidential election in October 2003;

ii. those guilty of fraud during the October 2003 presidential election have not been prosecuted or convicted; it was the same for most of the law-enforcement officers responsible for instances of torture, inhuman treatment, threats and intimidation in respect of members of the opposition, members of their families, supporters, journalists and human rights activists;

iii. some political prisoners and presumed political prisoners are still in jail, and there is still a risk of being arrested and imprisoned for purely political reasons;

6. With regard to the separation of powers, the Assembly is still waiting for the parliament to be genuinely able to play its role in legislating and in overseeing the Executive, and for the Judiciary to be completely independent of the Executive.

7. The Assembly is pleased to note that the Azerbaijani parliamentary delegation has taken initiatives with a view to making improvements, such as being in favour of abolishing the electoral code rule which does not allow NGOs, receiving 30% of their funds from foreign sources, to send observers to elections, or concerning the right to education for Chechen children born in Azerbaijan. The Assembly hopes that the list of the delegation's initiatives will be extended.

8. With regard to fundamental freedoms, the Assembly observes that:

- i. freedom of expression is by no means guaranteed in practice and journalists are increasingly engaging in self-censorship;
 - ii. freedom of association is still not unhindered, even now that the Legal Entities Act has been passed;
 - iii. permission to hold peaceful meetings is all too often refused, often on the basis of a pretext;
 - iv. law-enforcement bodies continue, according to numerous credible and consistent accounts, to use psychological pressure and violence against people who have difficulties with authority at any level;
 - v. prisoners continue to be ill-treated, not least in order to make them confess.
9. With regard to the media, the Assembly expects:
- i. the independent media in Azerbaijan to be able to resume their activities without being constantly threatened with being gagged or harassed;
 - ii. Azerbaijan to transform the two existing State television channels into genuinely independent public service broadcasting organisation. Establishing a public television service is indispensable for all democracies especially if the aim is to ensure real choice. The propagation of biased news programmes should be avoided.
10. In the light of the foregoing, the Assembly requests the Azerbaijani authorities:
- i. to remedy the violations of the electoral system and shed full light on the human rights violations that took place during and after the October 2003 presidential election;
 - ii. rapidly to release or pardon the seven people imprisoned following the events which took place after the elections and whom the co-rapporteurs met, and the 33 other people sentenced on that occasion;
 - iii. to take steps to investigate all cases of ill-treatment and torture and, where necessary, prosecute the perpetrators; government officials engaging in such practices should not be left unpunished;
 - iv. to legislate to protect political activists, their supporters and their families from all forms of harassment and intimidation from any source;
 - v. to take all steps to allow the press to operate independently;
 - vi. to ensure that election officers who are definitely responsible for fraud are taken to court;
 - vii. to publish full election results for each polling station and officially acknowledge the serious irregularities that marred the 2003 elections;
 - viii. to draw up a new civil register so that voters can be properly registered, if possible in time for the forthcoming municipal elections scheduled for end 2004, and at the latest in time for the parliamentary elections in 2005;
 - ix. to continue to reform the judicial system and co-operate with the Council of Europe in order to revise the Criminal and Civil Codes, draw up an Administrative Code and introduce alternative civilian service;
 - x. to increase aid to displaced persons, refugees and asylum seekers, particularly those from Chechnya, and to provide education for their children;

xi. to continue to take appropriate steps to honour their outstanding obligations and commitments, as set out in Resolution 1305 (2002) and Resolution 1358 (2004).

11. The Assembly cannot consider closing the current monitoring procedure until such time as Azerbaijan has proven that its commitments have been irreversibly implemented; its capacity to organise free and fair elections, in accordance with internationally recognised standards, will have to be tested again.

12. The Assembly takes note of the Azerbaijani authorities' willingness to adhere to the principles underpinning the Council of Europe and the values of a democratic, humanist and tolerant Europe. The Assembly once again asks the Azerbaijani authorities, as a token of their good faith, to take steps to settle the problem of political prisoners and presumed political prisoners who are still in jail, to refrain from reproducing the familiar cycle whereby they "manufacture" such prisoners, and resolutely to prosecute anyone who has taken part or who takes part in such acts as Azerbaijan has undertaken to prohibit on its territory.

13. The Assembly renews its invitation to the Azerbaijani parliamentary delegation and to the Azerbaijani parliament to spare no effort in supporting the measures the authorities need to take to comply with the Assembly's past and current recommendations.

14. The Assembly has decided that it will monitor the organisation of the forthcoming municipal elections with special care, as a new test of democracy in Azerbaijan.

II. Explanatory memorandum by the co-rapporteurs

Introduction

1. In January 2004 the Assembly adopted Resolution 1358 (2004) on the functioning of democratic institutions in Azerbaijan, which, inter alia, requested the Azerbaijani authorities to take a number of measures to remedy the shortcomings referred to in the Monitoring Committee's report. In order to take stock of the measures the authorities have taken in response to the Assembly's requests, Mr Andreas Gross visited Azerbaijan on 19 and 20 May 2004, and the co-rapporteurs went there on 3-9 August 2004, after Mr Andres Herkel was appointed. They warmly thank the Azerbaijani delegation and the country's authorities for the favourable reception they received and their excellent co-operation. They also wish to thank the Norwegian Ambassador to Azerbaijan, Mr Steinar Gil, for his valuable help in organising the visits, and the Secretary General's Special Representative, Mr Mats Lindberg.

The Nagorno-Karabakh conflict

2. In its Resolution 1358 (2004) the Assembly called on the Bureau to consider how the regional parliamentary dialogue and co-operation could be restored and allowed to progress as soon as possible. A meeting to this end was held on 17 May 2004, on the occasion of the Conference of Presidents of Parliaments, but the outcome is unknown. The Secretary General of the Assembly visited the three southern Caucasus countries from 29 June to 5 July 2004. He will have an opportunity to report on his visit at the Bureau's next meeting. The co-rapporteurs sincerely hope that co-operation among the three parliaments, should it come about, will help to restore a climate of mutual confidence and respect, which is cruelly lacking in the region.

3. High-level bilateral contacts, both between Foreign Affairs Ministers and between Presidents of the Republic, have, admittedly, been maintained and are continuing¹. No progress has been observed, however, in the discussions, as the two parties can only acknowledge that they disagree². Both countries no doubt missed the opportunity to make peace ten years ago, and history will be the judge of those in charge. In the meantime, there are still skirmishes at the border between the two countries, and the armed forces of the secessionist republic carried out military training exercises early in August 2004, which can only be considered as pointless and unnecessary provocation, for it is impossible to see what precise, imminent threat Azerbaijan represents to the survival of the population of Nagorno-Karabakh and the provinces administered by the self-proclaimed secessionist Republic of Mountainous Karabakh. The same applies to the organisation on 8 August 2004 of local elections in its territory, which, moreover, the Secretary General of the Council of Europe described in a press release as "counter-productive"³.

4. The co-rapporteurs studied with interest the draft report of the Political Affairs Committee on the "conflict in Nagorno-Karabakh dealt with by the OSCE Minsk Conference", a title which is in fact inappropriate, given that the OSCE seems to be increasingly neglecting the issue. There is no doubt that the Azerbaijani authorities want to achieve a negotiated peaceful settlement of the conflict, but there is no doubt either that the conflict is still being politically exploited in both countries for domestic policy purposes, regardless of the suffering endured by the populations concerned.

5. Azerbaijan has still not dealt with the problem of rehousing displaced persons, ten years after the two countries signed a ceasefire. The rapporteurs had an opportunity to visit displaced persons' dwellings in the centre of Baku. These people have suffered a very harsh fate. Unfortunately, the authorities seem to be using them as hostages in support of their demand that the territories under Armenian control be returned. The rapporteurs do not think this is the right approach to the problem of rehabilitating displaced persons. The President of the Republic himself now seems to be aware of this since, at his instigation, oil

¹The last meeting between the Azerbaijani and Armenian Presidents took place on the occasion of the meeting of heads of state of the CIS in Astana on 16 September 2004.

² The President of the Republic of Armenia explained his country's official position in his statement to the Assembly in June 2004: Karabakh had never been part of the independent republic of Azerbaijan and, if the view was taken that the rights claimed by Karabakh were ill-founded, it was in any event necessary to find an explanation other than that of territorial integrity. This position is not, however, consistent with international law.

³ Press release of 4 August 2004.

revenue is now being used to provide decent accommodation for displaced persons in newly-built blocks of flats. The rapporteurs wish this process to be completed as soon as possible.

6. The rapporteurs were also able to talk to Chechen refugees - at least, the rapporteurs are prepared to accept them as such - and to discuss with them the specific problems facing the Chechen community of some 8,000 people, of which 10% of the children who had not until recently been admitted to school (of course it is well known that young people who have no education can easily be led into delinquency or criminal activities). These people have no status under the Geneva Convention, since they have been refused refugee status by the HCR. One specific concern they voiced, which one of the co-rapporteurs was able to discuss with the ICRC representative, is that, contrary to its Constitution⁴, Azerbaijan does not grant Azerbaijani nationality to children of these refugees born on its soil. The rapporteurs put these people's case to the Minister for Foreign Affairs, the Minister for Justice and the President of the Republic, who replied that the situation would be examined. Azerbaijan needs to have the courage to match its independence, as it has shown itself to have on other occasions, for example by refusing to be associated with the recent declaration by the CIS countries criticising the OSCE's activities in the human rights field⁵.

Past and future elections

7. International organisations and NGOs were particularly critical of the presidential election on 15 October 2003, especially the OSCE, whose final report was, in return, harshly criticised by the authorities⁶. It should be remembered that results in 694 polling stations were unanimously invalidated by the Central Election Commission (CEC) itself. Three members of the CEC refused to sign the final results protocol, however. To date, neither the CEC nor the authorities have acknowledged that the election was marred by widespread fraud.

If the results of the invalidated elections can be announced on Internet, which seems to be a good thing, they should also be published locally ; in Balaken for example, the public protested complaining to the co-rapporteurs that they didn't have access to computers and that therefore they were not aware of the frauds produced therein.

8. The CEC carried out its own enquiry into the procedural irregularities and put the blame on the members of the district election commissions and polling station officers who refused to sign the protocols. They were arrested, then released, by the Ministry of the Interior, who reported their release to the ODIHR on 22 November 2003.

9. Contrary to the recommendations of the Assembly, no parliamentary commission of inquiry was set up to investigate allegations of fraud or to identify those who had rigged the results, or indeed to investigate human rights violations, in particular allegations of torture before and after the election of 15 October 2003. One can perceive a sign of weakness on the part of the Parliament in that it was not capable of setting-up enquiry committees, either for electoral fraud or on suspicions of torture.

10. While the Opposition must come to terms with its defeat, the fact remains that the election has left everyone with bitter memories, including the authorities, whose victory, while it is now established and is in no way being called into question by the international community⁷, is a Pyrrhic one.

11. All eyes are now on the forthcoming elections, the municipal elections scheduled to be held on 10 December 2004. For the time being, the signs are hardly encouraging. It is in Azerbaijan's interest to show the world as a whole that it is capable of organising elections properly and has the will to do so, and this will be all the easier as the municipal elections are certainly not those in which the political stakes are greatest or feelings most likely to run high⁸. The co-rapporteurs would encourage the authorities to foster in the provinces numerous candidatures, from people from diverse political backgrounds, as they have

⁴ Art. 52 of the Constitution of the Republic of Azerbaijan.

⁵ Declaration adopted on 8 July 2004 by 12 CIS states at the suggestion of the delegation from the Russian Federation. Moldova agreed to sign, subject to certain conditions.

⁶ See the final report by the OSCE/ODIHR Election Observation Mission, published on 12 November 2003.

⁷ To date, only two candidates in the presidential election have publicly recognised the election results: Lala Şevket and Sabir Rustamxanlı.

⁸ The co-rapporteurs can only urge that a decentralisation process be set in motion, though they are aware that it will be a long and difficult process and is not one of the country's priorities.

begun to do. The local elections are in fact an excellent means of learning democracy, and every effort should be made to improve the standards of local democracy.

12. The CEC, which is responsible for drafting the electoral code, should, notwithstanding its independence, endeavour to take account of the recommendations addressed to it by such international bodies as the OSCE and the Venice Commission, which have proven experience in this area and are internationally respected. In particular, the membership of the CEC itself and therefore, indirectly, of the district election commissions, raises a problem. Another problem voiced both by those concerned and by the embassies in Azerbaijan is the provision in the existing electoral code that prohibits NGOs that obtain 30% of their budget from foreign subsidies from observing the electoral process. It might be wise to amend this rule to refer to those that obtain 50% of their budget from subsidies from neighbouring countries, whether Russia, Iran or Turkey. The preparation of the electoral roll seems to be progressing, according to information from the Ministry of Justice, and identity cards are gradually being issued to Azerbaijani citizens, to enable them to vote. The Minister was not, however, able to assure us that the electoral roll would be ready in time for the 2004 municipal elections: the target was in fact the 2005 parliamentary elections.

13. Mayors are not directly elected in Azerbaijan. Voters therefore elect municipal councils, whose power is all the more limited as the municipalities have little political independence.

The problem of corruption

14. One area in which there are high expectations of the new President and government is obviously corruption, on which they are working. In January 2004 a law against corruption passed by Parliament was approved by presidential decree. The anti-corruption programme will come into force in January 2005. A department responsible for combating corruption has been set up within the Principal State Prosecutor's office, and has been operational since April 2004.

15. Evidently the person to be in charge of the fight against corruption should himself be of high moral standard and have total independence in his work, although the country still did not have adequate laws and structures for this struggle. The co-rapporteurs suggest that the authorities should follow the example of Estonia, where there is a state finances inspectorate which is totally independent, controlling all public transactions to avoid corruption, and can deal directly with the Minister responsible.

16. It will be very interesting to see what progress is made in a country where corruption is more or less endemic. The co-rapporteurs are pleased that Azerbaijan recently joined GRECO⁹: both the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption have come into force in the country on 1 June 2004.

17. Moreover, the decision to involve NGOs in investigations into corruption in the regions used to devise strategies for the national anti-corruption programme, launched at the same time as the decree was signed, is a sign of openness on the part of the Executive to which attention deserves to be drawn.

18. The revenue that will soon be obtained from the operation of the Baku-Tbilisi-Ceyhan pipeline is yet another temptation for those wanting to divert money from the State budget, despite protests to the contrary on the part of the machinery of State. The co-rapporteurs hope this revenue will be used for the benefit of the people of Azerbaijan, who, as the sole source of power in the country, are heirs to the country's natural resources under the Constitution.

Separation of powers

19. In the absence of further amendments to the Constitution of Azerbaijan, the text which defines the distribution of powers within Azerbaijan's political system, the co-rapporteurs consider that it would be very difficult to alter the existing institutional balance¹⁰. It should not be forgotten that the most recent amendment of the Constitution was endorsed by a referendum on 24 August 2002, and made no change to the existing separation of powers.

⁹ Its membership took effect on 1 June 2004.

¹⁰ The initiative for amendments to the Constitution may be taken either by the President of the Republic or by at least 63 Members of the Milli Meclis, which has 125 members.

20. Criticism of the lack of independence of the judiciary is becoming increasingly awkward for the Ministry of Justice. Starting next year, the procedures for the appointment of judges are to become more rigorous. Thus the government hopes to establish a more competent body of judges, better able to interpret legislation. The co-rapporteurs reported to the Minister for Justice the interesting case of a judge who was allegedly forced to write down what was dictated to him by instructions given by his superiors, leading to completely contradictory legal reasoning. The Minister nevertheless refused the judge's complaint and gave very different explanations of the judge's conduct. Whatever the true version of this case, the outcome was the same: a manifestly rigged trial, whether according to the will of a higher authority or that of the judge himself, who reportedly acted in a spirit of revenge or through neglect of his duties to the judicial system. This is just one illustration of the problems of the judicial system in Azerbaijan, and while it is of course a caricature, there are many such instances.

Torture and ill-treatment; violations by the law enforcement bodies of fundamental human rights

21. Very specific allegations of torture and ill-treatment were reported to the co-rapporteurs, particularly by people who had been sent to prison following the events of October, and this was done in the presence of the Deputy Minister for Justice with responsibility for the prison system. The prisoners were able to give very precise names and facts. Other evidence reached the delegation indirectly through NGOs¹¹. On hearing these facts and the names cited, our official contacts, and quite particularly the Minister for the Interior and the Principal State Prosecutor, took note, but protested that no investigation could be made at their initiative involving questioning of the perpetrators of excesses, as no complaint had been lodged with a court. The reference to the independence of the judiciary seems in this case rather clumsy and can be no excuse or justification for the absence of any investigation and prosecution of the law enforcement bodies where these acted too brutally to hold the demonstrators in check during the events of 15 and 16 October¹². To the knowledge of the co-rapporteurs, only one of the October prisoners has lodged a complaint about torture, and his complaint¹³ has been dismissed by the courts.

22. The co-rapporteurs point out that torture is specifically prohibited by the 1949 Geneva Conventions and the Anti-Torture Convention, but also by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and those regional instruments to which Azerbaijan is a party, namely the ECHR and CPT. Azerbaijan has acceded to these instruments, expressing its own wish to bound by their provisions. The CPT has already made two visits to Azerbaijan, one in November/December 2002, the other in January 2004. The co-rapporteurs regret the fact that Azerbaijan has not hitherto authorised publication of the CPT reports, and they invite the authorities to remedy this as speedily as possible.

23. The absence of any published CPT report on Azerbaijan should not make us forget that the CAT has already published comments on two national reports, the most recent relaying numerous allegations of torture at police stations, in places of custody and in prisons¹⁴. According to information supplied by the Ministry of the Interior, members of the police force have already been tried and removed from office for failure to comply with fundamental human rights, and the Ministry is endeavouring to provide such staff with better training about detainees' rights than has been provided in the past. This seems at least partly to satisfy the suggestions put forward by the CAT, which, while it did note that serious progress had been made in legislation, had nevertheless expressed anxiety about the gulf between the law and its practical application. It is regrettable that Azerbaijan, where prisons generally offer far superior living conditions to those in many Council of Europe states, seems to have stuck to previous practices, although it had undertaken to put an end to these, as reflected in its legislation.

24. The difficulties connected with the political and economic transition, the legacy of a totalitarian past to which many people had fallen victim, the difficult relations with its neighbours and the suffering caused to the Azerbaijani people by the lost war and the ensuing occupation of territories are undeniable, but cannot justify

¹¹ The information collected always refers to the same places where torture is allegedly practised: the Department for Struggle against Organised Crime, the Head Police Department of Baku and police stations in the Baku district.

¹² The Office of the Principal State Prosecutor did direct an enquiry procedure, which seemed ready to be closed, unless further information became available.

¹³ This is the case of Sardar Jelal oglu Memmedov, which has been submitted to the ECHR.

¹⁴ CAT/C/CR/30/1 and CAT/C/SR.550 and 553.

violations of fundamental rights for which the authorities bear responsibility, committed because of ignorance or lack of education among the perpetrators. Fear of a plot or a coup d'état is not an admissible argument either: a democratic state must be able to defend itself without resorting to methods which run counter to the values that it professes.

25. The seven "election prisoners" visited in the prison of Bayil believe that they have not committed any crime. The continuation of their detention, during an equally long wait for the court's decision, increasingly unbearable for them, does seem to be quite futile suffering in the light of what they have already endured¹⁵. They claim that the procedure is artificial and fails to meet the Council of Europe's standards, and there are witnesses from international organisations who confirm this. The response from the government side, in contrast, was that these prisoners' lawyers were the prime causes of the procedural violations. The independence of the judiciary seems still to be a matter of concern, when it is not simply judges' incompetence which gives rise to anxiety. The authorities have decided to take measures in response to this criticism, and the results of these are awaited. In the face of these problems, which are, after all, not recent ones, an amnesty law, said during our first visit to be on its way, will be welcome¹⁶. In the meantime, the co-rapporteurs express their wish for the court to come to its verdict rapidly, and, once this verdict has been announced, for the President to adopt a decree pardoning any persons convicted, whatever their status. Social peace comes at this price.

26. It is the responsibility of the strongest, i.e. the Government, to take steps initiating procedures of harmonious relations between Government and opposition. The President did offer to hold discussions with the opposition both before and after the presidential election, and the co-rapporteurs are aware that this "policy of the outstretched hand" is still being pursued, notwithstanding the events which might provide evidence of the contrary. They therefore call on the opposition to regain its composure and accept this offer as soon as possible.

27. Less is known by the co-rapporteurs about the fate of the other 33 persons arrested and convicted following the events of October and still held in detention, and there was unfortunately no time to meet these detainees. The co-rapporteurs, whose attention has been drawn to their case by the NGOs, hope that they will not be left off the list of persons to be pardoned.

28. The NGOs also told the co-rapporteurs about ill-treatment which continued to be meted out to political or presumed political prisoners, particularly at Qobustan top-security prison. The setting up of a Council of Public Control for Securing Human Rights in Places of Detention by the Deputy Minister for Justice with responsibility for the prison system, who invited NGO representatives to participate in this, is welcomed by the co-rapporteurs: it will enable compliance with human rights in these places of detention to be monitored. They regret the fact that the invitation was not extended to such eminent defenders of human rights as Mr Eldar Zeynalov, who had drawn up the list of 716 prisoners whose cases had been examined by the independent experts of the Secretary General of the Council of Europe¹⁷.

The fate of old and "new" political prisoners

29. Although the Secretary General of the Council of Europe said on 13 July 2004 that it had, basing himself on the final report of the independent experts drawn up during their second term (2002-2004)¹⁸, the

¹⁵ The trial of these seven persons (their names are Penah Çodar oğlu Huseynli, Arif Mustafa oğlu Hacili, Rauf Arif oğlu Abbassov, İgbal Fehrüz oğlu Agazade, İbrahim Meşehilal oğlu İbrahimli, Serdar Jelal oğlu Memmedov and Etimad Savalan oğlu Esedov), opened on 7 May 2004 in the Azerbaijani Serious Crimes Court, the judge for this case being Mr İbayev.

¹⁶ In pursuance of the Constitution, amnesties are a matter for the Milli Meclis. The Supreme Court was to be consulted with a view to the drafting of the relevant law.

¹⁷ Mr Zeynalov also complained about the difficulty of access to those prisoners for whom he is the representative or counsel. The Ministry of Justice allegedly uses a restrictive interpretation of the law which allows unlimited access to the lawyer, but limited access to any other person advising or representing the person concerned within the justice system.

¹⁸ See doc.SG/Inf(2004)21, published by the Secretary General on 13 July 2004, to which the text of the experts' final report is attached. In the 104 final opinions issued, the independent experts took the view that there were 45 political prisoners, but the Secretary General was able to note with satisfaction that all the political prisoners identified as such by the experts during their second term had been released, with just two exceptions, in cases where a retrial was awaited. On the other hand, 55 persons were not regarded as political prisoners, while four were no longer such prisoners.

question of such prisoners has not been completely resolved, although four decrees pardoning prisoners have been issued by the new President of Azerbaijan, Mr Ilham Aliyev¹⁹.

30. Of the 17 pilot cases regarded as political prisoners by the experts during their first term²⁰, four remain in prison to date (they are Raqim Qaziyev, Elçin Samir oğlu Amiraslanov, Natiq İslam oğlu Efendiyev and Arif Nazir oğlu Kazımov). A distinction has to be made between the case of one individual who have had a retrial, and those of another two persons whose retrial in the Qazax OPON (OMON) case is continuing. And finally, one last person's retrial has not yet begun, in spite of an assurance having been given in a presidential pardon decree that he would be retried. The co-rapporteurs did not visit any former political prisoners, since the rapporteur of the Committee on Legal Affairs and Human Rights had met them in May this year while preparing his report on "political prisoners in Europe"²¹.

31. Furthermore, according to information supplied by NGOs, there remain 76 prisoners arrested and convicted between 1 January 2001 and 15 April 2002, the date when the European Convention on Human Rights came into force for Azerbaijan, and to these another 21 people arrested and convicted after 15 April 2002, including 16 Azerbaijanis accused of participating in Chechen guerrilla activity in the Pankisi Gorges and extradited by Georgia, now have to be added. As well as these, there are 40 October prisoners, seven of whom are being tried by Azerbaijan's Serious Crimes Court. The rapporteur of the Committee on Legal Affairs and Human Rights regards these persons as potential political prisoners, were they to be tried and convicted. The co-rapporteurs prefer to describe them as presumed political prisoners, to use the terminology adopted by the Assembly.

32. The co-rapporteurs would like again to draw the authorities' attention to two points: the first is that while some well-known prisoners have been released as a result of a presidential pardon, their subordinates or those linked to them by family, political or professional ties, remain in prison, as if "left out" of the pardon process. Secondly, as proven by the cases of the October election prisoners, those close to these persons are, continuing a kind of well-oiled tradition, being arrested, beaten, placed in detention and released or convicted, imprisoned and then released, and when they are free are harassed in various ways, including by the judicial system. This practice, which had now ceased, according to the Minister for Justice when he spoke to one of the rapporteurs in May, therefore seems not to have been completely dropped, and the Minister for Justice took good note of this when the co-rapporteurs made their latest visit.

33. Another problem raised by an NGO at a meeting with the Minister for the Interior is that of the rehabilitation of former members of the Special Police Squad released under a presidential decree but who, on their release from prison, had no papers, no work, no welfare protection and no medical cover of any kind²².

34. Lastly, the co-rapporteurs were told of the case of a young person accused of having threatened a terrorist attack against the US Embassy. This person has been questioned and remains in detention pending the court's verdict, although there seems to be no evidence whatsoever against the person concerned, the investigation having been based solely on the fact that the accused's flat had been used to make a telephone call²³.

35. Again, the co-rapporteurs call for clemency: social peace cannot be lastingly restored other than through the release of these last prisoners, presumed political prisoners or about to acquire that status. It is normally the Government in power which should take the first steps to open the dialogue.

¹⁹ The last three presidential decrees pardoning prisoners subsequent to the adoption of Resolution 1358(2004) were issued on 17 March, 10 May and 3 September 2004.

²⁰ See docs. SG/Inf(2001) 34 and addenda, published by the Secretary General on 24 October 2001.

²¹ His visit took place from 9 to 12 May 2004, and its findings are in the information paper presented in committee on 6 June 2004 (ref. AS/Jur(2004)23); this paper was to be revised for the committee's meeting of 16 September 2004.

²² The Minister for the Interior has given the co-rapporteurs a guarantee that he will deal with the problem on a case-by-case basis, having issued an order setting up an ad hoc committee to examine their rights (Order No.340 of 2 August 2004).

²³ This person's name is Cavanşir Sadıxov. The call was allegedly made in February 2004; arrest did not follow until April, and identification of the voice in July.

Freedom of association and assembly

36. The Parliament of Azerbaijan has adopted a law on the registration of legal entities, and this has come into force, so NGOs which so wish can now register. Although this is a mere formality, some NGOs have said that they are experiencing problems with their registration. A good number of the NGOs which the co-rapporteurs of the Monitoring Committee or the Committee on Legal Affairs and Human Rights habitually meet are not, therefore, registered. Thanks to the Norwegian Embassy, a “centre for NGOs” is on the point of being created, and this will enable human rights organisations to find premises in the capital city.

37. The co-rapporteurs encourage those embassies which so wish to set up an “education and learning centre”, where education would be available to the Azerbaijan population, and language courses similar to those already organised by certain embassies, and to offer education in democracy and human rights and even organise a civics summer school for students.

38. One matter of concern for the co-rapporteurs is the infringement of freedom of assembly for the community of the Cuma mosque. Members of the community were gathered together in the mosque when they were dispersed by the law enforcement bodies in the presence of the Norwegian Ambassador, and the authorities imposed a new leader on the mosque. The religious community nevertheless refused to recognise this new leader and gathered in a private place under the authority of the former leader, İlqar İbrahim oğlu Allahverdiyev²⁴, who had in the meantime taken refuge in the Norwegian Embassy, but the law enforcement bodies intervened again to prevent their meeting. The co-rapporteurs advise the authorities of Azerbaijan, one of the few secular states of Europe, to refrain from intervening in the religious affairs of the country's citizens.

39. Since the events of 15 and 16 October 2003, the situation of the opposition has worsened throughout the country both materially and in terms of morale. The numbers of members of an opposition which can be mobilised are thinning out, some of its leaders being in prison and others having almost completely lost their credibility²⁵. The authorities, applying their own logic in an effort to learn the lessons of the Şeki riots in 2000 and those in Baku in 2003, systematically prohibit any public demonstration or manage to deter opposition political party sympathisers from attending meetings. Thus the opposition parties are continuing their existence more or less in hiding. Several parties have already had premises confiscated from them in Baku. In Şeki, in contrast, the governor of the province (“ExCom”) has made available to the opposition parties a building which they are using as a headquarters. Drawing on this good example, the municipality of Baku could, for example, take similar action to make good the confiscation of premises previously occupied by political parties.

40. The opposition, criticised by the government for having no constructive ideas for the country's future, and which allegedly has as its main occupation the denigration of people (including foreigners) in its newspapers, is taking the first painful steps in a rebuilding process, so as to prepare for the forthcoming elections, which it regards as lost in advance. It is true that the prohibition of public gatherings does not facilitate the involvement of party activists with a view to the elections. The co-rapporteurs call on the authorities to use discernment in order to prove their good faith in the organisation of free and fair elections. The polarisation of Azerbaijani society has reached its apogee: rarely has such a gulf been felt between the authorities and “others”. This antagonism taken to extremes can only lead to more organised rioting, the outcome of which is predictable.

41. It is therefore necessary to create equal opportunities for both parties. To this end, the President and the Speaker of Parliament could for example together decide to set up in the centre of Baku a “house of parties”, where political parties, having obtained at least 1% of votes in elections, would have their own offices, but where they would be grouped together. This could be considered a gesture of goodwill on the part of the Government.

²⁴ Having been arrested for participating in the events of 15 and 16 October 2003, he had been released again on 2 April 2004.

²⁵ On several occasions, the rapporteurs were told that citizens were refusing to take part in public meetings unless they were paid, a sign that bribery is being used against the “opposition” as well.

Freedom of expression and the media

42. The situation of the media, which was in any case not very good, now seems to be even more worrying than before. The courts regularly fine newspapers excessive sums for articles insulting certain persons in authority or close to the authorities²⁶, sums which the court of appeal endeavours to reduce. Unfortunately, journalists continue to be the subject of repressive measures, although it is, mysteriously, impossible to identify who is behind this action. On 17 July 2004 a journalist was kidnapped, then held in a vehicle and beaten over a period of several hours²⁷. An investigation was carried out by the Minister for the Interior, but this did not lead to any results. Another journalist was beaten up in the street by unknown persons on 26 July 2004²⁸. The co-rapporteurs, and they discussed this with the Minister for Justice, who understood perfectly, would like Articles 147 (defamation) and 148 (insult) of the Criminal Code to be revoked. These articles have also been used to start criminal proceedings against the newspaper “Yeni Müsavat” and the magazine “Monitor”.

43. Equally alarming is the situation of the electronic media. The President has rejected the draft legislation on radio and television adopted by parliament, so the representatives of international organisations and NGOs have to wait and see. The aim of the draft law is to transform the two state television channels²⁹ into public channels, and it has been criticised by the Council of Europe Media Division’s expert, criticism categorically rejected by the presidential authority, in the person of Mr Hasanov, media and communications adviser to the President, as a result of which the Organisation appointed a second expert. The experts were due to travel to Azerbaijan in the near future. It remains to be seen whether their recommendations will be taken into account. Whatever happens, it is probable that the law will ultimately be adopted by parliament before the Assembly’s autumn part-session. It is absolutely necessary for Azerbaijan to set up its public television service, in order that the public are correctly and independently informed. The country should give up its old-fashioned habits and begin anew. It should also reconsider the disadvantages of « heydarism », the personality cult following the deceased President, which could prevent liberty of expression.

44. Furthermore, the official secrets law was amended at last in the desired direction at the last plenary session of parliament and will be on the agenda of the next session. In 2002, the President had issued a decree requiring the 1996 law to be revised because of its failure to meet the international obligations of Azerbaijan.

Minorities

45. The co-rapporteurs had the opportunity to meet a representative of the Avar minority and a representative of the Lezgin minority, in Balaken and Şeki. These minorities feel perfectly integrated into the population and place on an equal footing their Azerbaijani national identity and their membership of a community (rather than “a minority”, a term rejected by members, here as in other countries). The main problem is a lack of literature, textbooks, newspapers and magazines, as well as radio and television programmes, in these communities’ languages. In these circumstances, the co-rapporteurs can only encourage Azerbaijan to ratify the European Charter for Regional or Minority Languages, a ratification which, according to information received, is to take place in the near future³⁰. The co-rapporteurs also learned that the preparation of a law on minorities, the adoption of which is a commitment made by Azerbaijan, was making good progress, and the law would probably be passed early in the next session of parliament. In its report on Azerbaijan of 15 April 2003, the ECRI also called on the government to adapt its legislation so as to take more account of the problem of racism. Where discrimination does exist, it is directed particularly against refugees and foreigners. The co-rapporteurs call on the authorities to give more attention to this problem.

²⁶ This financial harassment “campaign” has affected the newspaper “Xürriyet”, which had to cease publication in March 2004. Several million US dollars’ worth of cumulative fines have been imposed on the newspapers Azadlıq, Yeni Müsavat, Müxalifet and Xürriyet!

²⁷ This was Aydın Quliyev (Bakı Xeber).

²⁸ Eynulla Fatullayev (Monitor).

²⁹ AzTv1 and AzTv2.

³⁰ The Charter was signed on 21 December 2001.

Adoption and implementation of other new legislation

46. Parliament has adopted a new, and very much awaited, law on lawyers. All lawyers will now be entitled to appear before all the courts: thus parliament has rectified an anomaly engendered by the fact that this country with a population of eight million had only 3 000 lawyers allowed to do so. Another law has been passed to make it de facto possible for individuals to apply to the constitutional court in future, as laid down by the 2002 revision of the Constitution.

47. Where decentralisation is concerned, two laws are under preparation, one on local authorities, the other on the parallel problem of their financial independence. No date has yet been set for the adoption of these by parliament.

48. On the question of an alternative to military service, a solution at last seems to be on its way: adoption of the relevant law is expected in the near future, the final reservations stemming from the conflict in Nagorno-Karabakh seeming to have disappeared.

49. Finally, the co-rapporteurs note with satisfaction that the European Social Charter (revised) has been ratified on 2 September 2004.

Conclusions

50. Azerbaijan is again, almost a year after the 2003 presidential election, at a crossroads between a democratic European future and the more sombre prospects 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. They feel there is a strong ambiguity between the reforms on paper and their implementation, unbelievably lacking; however the fulfilment of commitments is not just a question of writing, it has to be carried out.

51. The reforms expected of Azerbaijan are moving slowly, although the fundamental work has already been completed. There is no doubt that the goodwill is there to progress towards Europe, but there is still too much tension in the state machinery, and the adoption of a new mindset is happening as if by force, in a way which is not harmonious, inexorably leading to blockages (legislation may be poorly implemented or interpreted), to a resurgence of the type of behaviour experienced in the past (much of the electoral fraud was caused by the incompetence and poor training of election officials), and to excesses committed within certain state bodies (it is an aberration for such serious and specific allegations of torture and threats, concerning family units, still to be reported to Council of Europe parliamentarians and officials).

52. Unfortunately, Azerbaijan has not put into practice everything demanded of it by the Assembly in January 2004. The country is surely striving so hard for independence that it wants to achieve the results expected by the Council of Europe through its own means and at its own speed. 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.

53. The elections page cannot be completely turned, and, as well as the immense task of healing the social divide, the government must give priority to the remaining obligations and commitments. The co-rapporteurs propose this timetable to the committee and to the authorities of Azerbaijan: pending the results of the Principal State Prosecutor's investigations and the outcome of the trial of the election prisoners, preparation of municipal election observation by the co-rapporteurs, followed by adoption of a monitoring report by the Assembly before the 2005 parliamentary elections, including at least one visit to the country, this report to cover the reforms undertaken (including the revision of the Criminal and Civil Codes and the preparation of an Administrative Code).

APPENDIX 1

Programme of the visit by the co-rapporteur to Azerbaijan 19 – 20 May 2004

Co-rapporteur: **Mr Andreas Gross**
Secretariat: **Mr David Cupina**

Arrivals: Tuesday 18 May 2004 (Mr Cupina) and Wednesday 19 May (Mr Gross)

Wednesday 19 May

11.00 Meeting with Mr Mats Lindberg, Special Representative of the Secretary General of the Council of Europe in Azerbaijan, and the Deputy Head of the OSCE Mission, Mr Seaward
12.00 Meeting with Representatives of the Embassies of the Member States in Azerbaijan
14.00 Meeting with representatives of the “Human Rights Centre of Azerbaijan” and the “Institute of Peace and Democracy”
15.00 Meeting with representatives of the “Monitoring Group of the Human Rights NGOs” and the “Human Rights Centre Against Violence”
16.45 Meeting with representatives of the following political parties of the opposition: Müsavat Party, Democratic Party of Azerbaijan, Popular Front of Azerbaijan and the Adalat Party
18.00 Visit to Bayil Prison
21.00 Meeting with Ms L. Shövket, Chair of the Liberal Party

Thursday 20 May

8.00 Meeting with A. Amashov, Chairman of the Press Council
9.00 Press Club of Baku, meeting with the Press Council
11.00 Meeting with the President of the Supreme Court
12.00 Meeting with the Procurer General
14.00 Meeting with the Minister of Justice
15.30 Meeting with the Minister of the Interior
17.00 Meeting with the Head of the Presidential Administration
18.00 Meeting with H.E. Ilham Aliyev, President of the Republic of Azerbaijan
19.30 Meeting with members of the Parliamentary Delegation of Azerbaijan
21.00 Meeting with representatives of international NGOs: Internews, NDI and IFES
22.30 Meeting with representatives of ICG
24.00 Meeting with Mr E. Mammedov, Chairman of the National Independence Party

Friday 21 May

Departure

APPENDIX 2

Programme of the visit by the co-rapporteurs to Azerbaijan 3 – 9 August 2004

Co-rapporteurs: Mr Andreas Gross
Mr Andres Herkel
Secretariat: Mr David Cupina

Arrival: 3 August 2004

Wednesday 4 August

9.00 Meeting with the Head of the OSCE Mission, Mr Pavesi, accompanied by Mr Mats Lindberg, Special Representative of the Secretary General of the Council of Europe in Azerbaijan
10.30 Meeting with the representatives of embassies of Member States in Azerbaijan
12.00 Meeting with the representatives “Human Rights Centre of Azerbaijan”, “Institute of Peace and Democracy”, “Azeri Foundation for Development of Democracy and Human Rights”, “Centre for the Development Programmes ‘EL’” and the “Oil Workers’ Rights Protection Committee”
14.00 Meeting with the Azerbaijani parliamentary delegation, of which the following parties: New Azerbaijan Party, Popular Front of Azerbaijan, Civil Solidarity Party, Protection Social Party
16.30 Visit to Bayil Prison
19.00 Meeting with Ms L. Shövket, Chair of the Liberal Party

Thursday 5 August

8.00 Meeting with representatives of the “Monitoring Group of Human Rights NGOs” and “Human Rights Centre”, and the “Human Rights Centre Against Violence”
9.30 Meeting with representatives of the media: Yeni Nesil, Confederation of Journalists, Zerkalo, Echo, Yeni Müsavat, Baki Xeber, Turan, Azertaj and Hürriyet
11.00 Meeting with the Minister of the Interior, with the participation of the Head of Baku Police Service
13.00 Meeting with the Vice-President of the Supreme Court and the President of the Court of Appeals
14.00 Meeting with the Prosecutor General of the Republic of Azerbaijan
15.00 Meeting with the Minister of Justice
16.30 Visit to a displaced persons camp in the centre of Baku
18.00 Meeting with representatives of the following political parties of the opposition: Müsavat Party, Democratic Party of Azerbaijan, Popular Front of Azerbaijan, National Independence Party, and the “Hope” Party
20.00 Meeting with Eldar Zeynalov and Zaliha Tahirova, representatives of the Chechen community of Azerbaijan and Georgia

Friday 6 August

9.00 Departure to the Sangaçan oil platform and visit of the site
12.00 Meeting with the Minister of Foreign Affairs
14.00 Meeting with the Head of the Presidential Administration
15.30 Meeting with H.E. İlham Aliyev, President of the Republic of Azerbaijan
18.00 Meeting with Ms L. Shövket, Chair of the Liberal Party

Saturday 7 August

7.00 Departure to the town of Balaken
14.00 Meeting with the Governor of Balaken Province and representatives of local military powers
17.00 Meeting with representatives of opposition parties, of local NGOs and a representative of the Avar minority
20.00 Departure to the town of Şeki
22.00 Meeting with the Governor of the Province of Şeki and the Mayor of Şeki

Sunday 8 August

8.00 Meeting with the Governor of the Province of Şeki and the Mayor of Şeki
10.00 Meeting with representatives of opposition parties, local NGOs and a representative of the Lezgian minority
11.30 Visit to Kiş Temple
13.00 Departure for Baku
19.00 Meeting with Mr Samad Seyidov, Head of the Parliamentary Delegation of Azerbaijan
23.00 Interview for the "Zerkalo" journal

Monday 9 August

Departure

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

Reference to committee: Resolution 1115 (1997) of 27 January 1997, Opinion No. 222 (2000) and Resolution 1358 (2004)

Draft resolution unanimously adopted by the committee on 15 September 2004

Members of the committee: **Mrs Durrieu** (Chairperson), **Mr Frunda**, **Mrs Tevdoradze**, **Mrs Severinsen** (Vice-Chairpersons), Mr Agramunt Font De Mora, **Mrs Aguiar**, **Mr Akçam**, **Mr B. Aliyev**, Mr André, Mr Arzilli, **Mr Atkinson**, Mr Baška, Mrs Bauer, Mr Bernik, **Mrs Bilgehan**, **Mr Bindig**, Mrs Bouşakla, **Mr Van den Brande**, **Mr Budin**, Mrs Burbiené, Mr Cabrnock, Mr M. Cavuşoğlu, **Mr Čekuolis**, **Mr Christodoulides**, **Mr Cilevičs**, Mr Colombier, Mr Debono Grech, Mr Einarsson, **Mr Elo**, **Mr Eörsi**, **Mr Glesener**, **Mr Gross**, Mr Grusenbauer, Mr Hancock, Mr Hedrich, Mr Hegyi, **Mr Herkel**, **Mr Holovaty**, Mrs Jääteenmäki, Mr Jakič, **Mr Jaskiernia**, Mr Jurgens, Lord Kilclooney, **Mr Kirilov**, Mrs Konglevoll, **Mr Kosachev**, **Mr Kvakkestad**, Mrs Leutheusser-Schnarrenberger, Mr van der Linden, Mr Lintner, **Mr Marty**, Mr Matušić, **Mr Medeiros Ferreira**, **Mr Melčák**, Mr Mikkelsen, **Mr Mollazade**, Mr O’Keeffe, Mr Olteanu, **Mr Pangalos**, **Mrs Petrova-Mitevski**, Mrs Pétursdóttir, Mr Prijmireanu, **Mr Rakhansky**, Mrs Ringstad, Mr Rivolta, **Mr Rustamyan**, Mrs Saks, **Mr Sasi**, **Mrs Shakhtakhtinskaya**, **Mr Shybko**, **Mr Slutsky**, Mr Smorawinski, **Mr Soendergaard**, Mr Spindelegger, Mrs Stoyanova, Mr Tepshi, **Mr Tkáč**, Mr Vis, **Mrs Wohlwend**, Mr Zacchera.

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

Head of the secretariat: Mrs Ravaud

Secretaries to the committee: Mr Gruden, Mr Čupina, Mr Kotlyar.