



Resolution 2062 (2015)¹
Provisional version

The functioning of democratic institutions in Azerbaijan

Parliamentary Assembly

1. The Parliamentary Assembly acknowledges the complex geopolitical context of Azerbaijan as it tries to balance its relations with the European Union, Turkey, Iran and the other Caspian Sea neighbours, the Russian Federation and the United States. Azerbaijan has managed to maintain an independent and diversified foreign policy position, in particular due to its sizable energy resources and strategic location on the Caspian Sea. The Assembly is fully aware of the Nagorno-Karabakh conflict which dominates to a large extent the Azerbaijani foreign policy agenda.
2. The Assembly takes note of the authorities' concerns over the security and the stability of the country due to alleged threats from abroad, in particular the alleged risks to Azerbaijan from the situation in some other European countries. In this context, Azerbaijan is a particularly important country with its energy resources playing a pivotal role, particularly as the European Union is seeking to diversify away from Russian energy supplies, which has considerably strengthened Baku's strategic position in recent months.
3. The Assembly notes that the Azerbaijani institutional structure grants particularly strong powers to the President of the Republic and the executive. In addition to the limited competences of the Milli Mejlis under the Constitution, it draws attention to the fact that not all opposition forces are represented in parliament, which is detrimental to true political dialogue and effective parliamentary oversight. This is mainly due to the electoral system, which is a one-round majoritarian system, similar to that of the United Kingdom, which favours both the ruling party and independent candidates, and, moreover, as the opposition in Azerbaijan is very divided and opposition candidates are often competing against each other, they thus weaken each other. The Assembly is therefore convinced that it is in the best interests of the democratic process and the ruling party itself to confront opposition parties in a representative body, and calls on the authorities to develop an environment favourable to political pluralism and increased parliamentary control over the executive to guarantee checks and balances.
4. In November 2015, Azerbaijan will hold parliamentary elections. The Assembly regrets that some of the most important recommendations of the European Commission for Democracy through Law (Venice Commission), such as those regarding the composition of the electoral commissions and candidate registration, have not been addressed. It recalls that the authorities in charge of electoral administration should function in a transparent manner and maintain impartiality and independence. Effective remedies are essential to ensure trust in the electoral process. Whereas during the 2013 presidential election in Azerbaijan, the election observation delegations of the Parliamentary Assembly of the Council of Europe and the European Parliament observed "a free, fair and transparent electoral process overall around election day, improvements being still desirable with regard to the electoral framework", the Assembly, however, calls on the Azerbaijani authorities to take the necessary measures to avoid the shortcomings highlighted during previous elections, such as the adoption of court decisions that were not fully reasoned and had no legal basis and the lack of true judicial supervision. The Assembly recognises the important contribution that it has made in promoting democracy in Azerbaijan through election observation missions. The Assembly believes that it is as important

1. *Assembly debate* on 23 June 2015 (22nd Sitting) (see [Doc. 13801](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Pedro Agramunt and Mr Tadeusz Iwiński). *Text adopted by the Assembly* on 23 June 2015 (22nd Sitting).

as ever to continue carrying out the monitoring function. In the event of the inability of other observation teams to participate, the Assembly should consider increasing the Council of Europe's contribution for the forthcoming parliamentary elections to ensure effective scrutiny of the election process.

5. The Assembly recalls that the independence of the judiciary is one of the basic preconditions of the separation of powers and of the system of checks and balances. It welcomes the recent legal amendments with regard to the judiciary, and in particular the new rule stipulating that judges of the Supreme Court must leave judicial tenure at the age of 68 and judges of all other courts at the age of 66, and the removal of the former regulation allowing the extension of judicial tenure for some judges up to the age of 70. It nevertheless encourages the authorities to further ensure full independence of the judiciary and in particular prevent influence and interference by the executive branch. The Judicial Legal Council should be composed either exclusively of judges, or of at least a substantial majority of judges elected by their peers. It is recommended that the role of the Judicial Legal Council in the appointment of all categories of judges and court chairpersons be further increased. Similarly, while acknowledging the recent legal amendments reducing the length of the probationary period for judges from five to three years, the Assembly recalls that the Venice Commission has constantly opposed probationary periods for judges and only tolerates them under strict conditions.

6. Despite these efforts, the lack of independence of the judiciary remains a concern in Azerbaijan, where the executive branch is alleged to continue to exert undue influence. Dubiously motivated criminal prosecutions and disproportionate sentences remain a concern. Fairness of trials, equality of arms and respect for the presumption of innocence are other major concerns. The Assembly is concerned about the use of pre-trial detention as a means of punishing individuals for criticising the government, as stated by the Court in the judgment in the case of *Ilgar Mammadov v. Azerbaijan*, in which it found a violation of Article 18 of the European Convention on Human Rights (ETS No. 5, "the Convention").

7. A slight decrease in the levels of corruption has been noted as a result of several important reforms and national and international state programmes. The Assembly welcomes the reduction of the level of corruption, especially due to daily services provided by the network of public service halls known as ASAN centres. While supporting the country's efforts to promote transparency and fight corruption, terrorism financing and money laundering, the Assembly urges the authorities to create an adequate balance between the rights of association and freedom of expression, as guaranteed by the European Convention on Human Rights, and the State's legitimate fight against organised crime.

8. In the light of the above, the Assembly calls on the authorities to review the law on non-governmental organisations (NGOs) with a view to addressing the concerns formulated by the Venice Commission and creating an environment conducive to the work of civil society. It is indeed worrying that the shortcomings in the NGO legislation have negatively affected NGOs' ability to operate. The strict control of NGOs by State authorities is likely to interfere with the right to freedom of association guaranteed by Article 11 of the Convention. In this regard, the Assembly condemns the crackdown on human rights in Azerbaijan where working conditions for NGOs and human rights defenders have significantly deteriorated and some prominent and recognised human rights defenders, civil society activists and journalists are behind bars. The Assembly calls on the Azerbaijani authorities to ensure objective trials of the cases of the detained people. At the same time, the Assembly takes note of the adoption of the Law on Public Participation implementing public control over central and local executive powers and local self-governing bodies, ensuring the participation of civil society institutions in decision-making processes.

9. The Assembly is deeply concerned about the increasing number of reprisals against independent media and advocates of freedom of expression in Azerbaijan. In this regard, it deplores the arbitrary application of criminal legislation to limit freedom of expression, in particular the reported recent use of different criminal laws against journalists and bloggers, and recommends taking necessary measures to ensure a genuinely independent and impartial review by the judiciary of cases involving journalists and others expressing critical voices.

10. The Assembly is alarmed by reports by human rights defenders and international NGOs, confirmed by the Council of Europe Commissioner for Human Rights, about the intensification of the practice of the criminal prosecution of NGO leaders, journalists, their lawyers and others who express critical opinions, based on the use of alleged charges in relation to their work, especially human rights lawyer Intigam Aliyev; head of an election monitoring group Anar Mammadli; veteran activist Leyla Yunus and her husband Arif Yunus; founder of the "Sports for Rights" campaign Rasul Jafarov and journalists Khadija Ismayilova and Rauf Mirgadirov. The Assembly calls on the authorities to end the systemic harassment of those critical of the government and to release those wrongfully detained. The Assembly shares the concerns voiced by the Commissioner for Human Rights on the judicial system. The Assembly welcomes the resumption of the activities of a Joint Working

Group on Human Rights Issues, composed of representatives of civil society, prominent human rights activists, Council of Europe representatives, and representatives of the authorities, following the agreement between the Council of Europe Secretary General and the President of the Republic of Azerbaijan in August 2014.

11. Taking these concerns and developments into account, the Assembly calls on the Azerbaijani authorities to:

11.1. put an end to systemic repression of human rights defenders, the media and those critical of the government, including politically motivated prosecutions, allow for effective judicial review of such attempts, and ensure that the overall climate can become conducive to political pluralism ahead of the forthcoming elections in November 2015;

11.2. fully implement the judgments of the European Court of Human Rights, in conformity with the resolutions of the Committee of Ministers;

11.3. with regard to checks and balances, reinforce the actual application of the constitutionally guaranteed principle of the separation of powers, and in particular:

11.3.1. strengthen parliamentary control over the executive;

11.3.2. ensure full independence of the judiciary, in particular vis-à-vis the executive;

11.4. with regard to elections:

11.4.1. speed up the implementation of the outstanding recommendations of the Venice Commission and of the Committee of Ministers in its decisions on the execution of the judgments by the European Court of Human Rights in the Namat Aliyev group, in time for the forthcoming elections, and in particular:

11.4.1.1. take the necessary measures to resolve the problems revealed by the Court's judgments as regards the independence, transparency and legal quality of procedures before the electoral commissions;

11.4.1.2. further improve the system of control of the conformity of the elections in order to prevent any arbitrariness and allow for effective judicial supervision over the procedures;

11.4.1.3. continue the reforms of the composition of the electoral administration and candidates' and voters' registration, based on the recommendations of the Venice Commission and of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR);

11.4.1.4. finalise the ongoing reforms concerning party financing and in particular the financing of election campaigns, in line with recommendations the Group of States against Corruption (GRECO);

11.4.1.5. ensure that candidates are required to notify executive authorities only of their intent to hold a gathering;

11.4.1.6. make use of the Venice Commission's expertise in this field;

11.4.1.7. take note of the need for clear assignment of responsibilities and also the problematic practice of registration on electoral registers on the election day itself;

11.4.2. encourage a climate favourable to pluralism, free campaigning and freedom of the media for the November 2015 elections;

11.5. with regard to the judiciary:

11.5.1. ensure independence of the judiciary and judges and prevent and refrain from exerting any pressure on them;

11.5.2. further amend the legislation on the composition and powers of the Judicial Legal Council and the appointment of judges with a view to decreasing the influence of the executive, and in particular:

11.5.2.1. further ensuring that the Judicial Legal Council is composed either exclusively of judges or of a substantial majority of judges elected by their peers, giving more powers to the General Assembly of Judges;

11.5.2.2. consider removing the probation period for judges, or at least further decreasing its length based on objective pre-established criteria;

11.5.3. take the necessary measures to avoid criminal proceedings being instituted without a legitimate basis and to ensure effective judicial review of such attempts by the Prosecutor's Office, as well to prevent violations of the presumption of innocence by the law-enforcement authorities and members of the government;

11.5.4. take all necessary measures to guarantee due process and impartiality of the courts, in compliance with Article 6 of the European Convention on Human Rights;

11.5.5. take the necessary measures to ensure that pre-trial detention is not imposed without considering whether it is necessary and proportionate, or whether less intrusive measures could be applied;

11.5.6. use all available legal tools to release those prisoners whose detention gives rise to justified doubts and concerns;

11.5.7. refrain from exerting any pressure on lawyers defending NGO representatives and journalists;

11.5.8. ensure that the Ombudsman is legally independent and provided with a professional immunity function and also has the competence to review issues relating to human rights and to the media;

11.6. with regard to freedom of expression:

11.6.1. create proper conditions for journalists to carry out their work and refrain from exerting any kind of pressure on them;

11.6.2. stop the reprisal of journalists and others who express critical opinions;

11.6.3. refrain from limiting freedom of expression and freedom of the media in both legislation and in practice;

11.6.4. speed up efforts towards the decriminalisation of defamation, in co-operation with the Venice Commission, to ensure that defamation cannot be associated with excessively high criminal sanctions, including imprisonment; and, in the meantime, use the existing legislation with caution to avoid prison sentences for such offences;

11.6.5. release all political prisoners, including those who have co-operated with the Parliamentary Assembly;

11.7. with regard to freedom of association:

11.7.1. review the law on NGOs with a view to addressing the concerns formulated by the Venice Commission;

11.7.2. create an environment conducive for NGOs to carry out their legitimate activities including those expressing critical opinions;

11.8. with regard to international co-operation:

11.8.1. reverse the authority's decision on the closure of the OSCE office in Baku and co-operate fully with this organisation.

12. The Assembly resolves to closely follow the situation in Azerbaijan and to take stock of the progress achieved in the implementation of this and previous resolutions.