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## 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)

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### Summary

On 15 October 2008, Azerbaijan will be holding its second presidential election since its accession to the Council of Europe in 2001. Taking into account that all the ballots held since have generally failed to meet basic democratic standards, the Monitoring Committee underlines that the country cannot afford to fall short again in meeting the Council of Europe commitments and standards for democratic elections.

In this context, the Monitoring Committee can only express great concern about the deteriorating human rights situation in Azerbaijan, which undermines any efforts made by the authorities to meet basic democratic standards in the forthcoming presidential election.

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, which the Monitoring Committee considers inadmissible in a Council of Europe member state.

In order for Azerbaijan to honour its obligations and commitments to the Council of Europe, these issues have to be addressed without further delay and in time before the next presidential election. The Monitoring Committee urges all relevant authorities to take the following urgent steps:

- ensure balanced election commissions and an efficient complaints procedure;
- provide free broadcast time and print space in state media under equal conditions for political parties and blocs;
- guarantee the opposition's right to hold public rallies.

The Monitoring Committee also demands the immediate release of opposition journalists Ganimat Zahidov, Sakit Zahidov and Eynulla Fatullayev, as well as of prisoners Natiq Efendiyev, Rasim Alekperov, Ruslan Bashirli, Akif Huseynov and Telman Ismayilov.

**A. Draft resolution**

1. Growing oil and gas business has strengthened the economy of Azerbaijan. With a gross domestic product growth in 2007 of 25 percent, the Azerbaijani authorities are facing a major challenge as they try to transform important dividends of the oil business into the sustainable development of society.
2. On 15 October 2008, Azerbaijan will be holding its second presidential election since its accession to the Council of Europe. Considering that all ballots held since accession have generally failed to meet basic democratic standards, the Parliamentary Assembly considers the forthcoming ballot to be crucial for Azerbaijan's democratic credibility. Azerbaijan cannot afford to fall short again in meeting Council of Europe commitments and standards for democratic elections.
3. When joining the Council of Europe in 2001, Azerbaijan clearly opted for European standards with respect to democracy, the rule of law and human rights. The Assembly has been following closely the developments in the country and notes that a number of reforms are underway, in co-operation with the Council of Europe.
4. However, the Assembly considers that the success of the reforms is less a matter of the letter of the laws than a matter of their implementation and can only express great concern about the deteriorating human rights situation which undermines any efforts made by the authorities to meet basic democratic standards in the forthcoming presidential election.
5. The Azerbaijani society needs concrete reconciliation measures in order to join the path of democratisation. Much remains to be done to ensure that the Parliament plays its role as a public forum for political debate. Dialogue should be urgently established between the ruling majority and the opposition both inside and outside Parliament if the political climate in the country is to be improved and the population's confidence in the electoral process restored.
6. The Assembly calls on all opposition parties to take part fully in the electoral process and to appoint urgently the two remaining members of the Central Electoral Commission.
7. Furthermore, the Assembly urges the Azerbaijani authorities to guarantee the opposition's right to hold public rallies.
8. Restrictions on the freedom of expression, the harassment and intimidation of opposition journalists through defamation court proceedings, imprisonment, physical attacks and threats, as well as limitations of the right to freedom of assembly and association are matters of great concern which the Assembly considers inadmissible in a Council of Europe member state. In order for Azerbaijan to honour its obligations and commitments to the Council of Europe, these issues have to be addressed without further delay and in time before the next presidential election.
9. The Assembly condemns the recurrent attacks against the opposition newspaper Azadliq and in particular the arrests, judicial proceedings and incidents of violence against its reporters and staff, as well as intimidation through financial pressure. It urges the Azerbaijani authorities to ensure the effective prosecution of perpetrators of all attacks against journalists, including a proper investigation into the case of reporter Agil Khalil, who has been recently stabbed by unknown assailants.
10. Judicial corruption and the lack of independence of the judiciary remain serious problems in Azerbaijan, as the authorities themselves acknowledge. The shortcomings of the Azerbaijani judicial system results in the creation of new cases of unfair and politically motivated trials and imprisonments. In this regard, the Assembly welcomes the constructive attitude of the Azerbaijani authorities and asks them to enhance their efforts to effectively eradicate corruption among judges, to further reform and train the Azerbaijani judiciary and to improve its negative image in the country.
11. Numerous cases of ill-treatment and allegations of torture by law-enforcement officials during police custody or pre-trial investigations, as well as in the army, for the purpose of extracting confessions or obtaining incriminating statements by witnesses, continue to be reported. Regrettably, investigations into such behaviour have rarely led to the prosecution of officers who have committed such abuses.
12. Recalling its Resolutions 1457 (2005) and 1545 (2007), the Assembly does not consider the issue of political prisoners to have been resolved, despite efforts made by the Azerbaijani delegation to the Assembly

in the search for a definitive solution to this issue, within the framework of the Task Force composed of representatives of the authorities and of human rights defenders.

13. The Assembly takes note of the presidential pardon decrees of 28 December 2007 and 18 March 2008, which led to the release of respectively 114 and 59 prisoners and included 6 journalists and 23 prisoners appearing on the list of prisoners drawn up by human rights defenders. It also welcomes the recent release of Mr Sahavat Gumbatov and Mr Ramin Tagiyev by court decisions. It strongly regrets, however, that none of the prisoners referred to in Resolution 1545 (2007) has been released and that the three journalists associated with the most vocal opposition newspapers, Ganimat Zahidov, Sakit Zahidov and Eynulla Fatullayev, remain in prison.

14. The Assembly can only but regret that the only amnesty law adopted by the Parliament of Azerbaijan, on 8 May 2007, which led to the release of 9,000 persons convicted of petty crimes, did not include any of the prisoners in respect of whom the Assembly has repeatedly expressed concern.

15. In view of the above, the Assembly recalls its Resolution 1545 (2007) on the honouring of obligations and commitments by Azerbaijan and urges the Azerbaijani authorities to undertake a number of measures without further delay.

16. As regards the preparation of the presidential election:

16.1. the Assembly calls on the Parliament of Azerbaijan to adopt the revised Electoral Code, in full compliance with the recommendations of the European Commission for Democracy through Law (Venice Commission), before its summer recess, and the authorities to take all necessary measures to implement it immediately and fully. This implies that:

16.1.1. the composition of the Central Electoral Commission, and also of the territorial and precinct electoral commissions, should be balanced and should not be dominated by pro-government forces;

16.1.2. independent candidates in the Central Electoral Commission and territorial electoral commissions should be agreed upon by consensus;

16.1.3. the posts of Chairperson, Vice-Chairperson and Secretary of electoral commissions at all levels should be fairly distributed;

16.1.4. an efficient complaints and appeals procedure should be guaranteed;

16.2. the Assembly calls on the Parliament of Azerbaijan to adopt the revised 1998 law on freedom of assembly, in full compliance with the recommendations of the Venice Commission, before its summer recess and the authorities to take appropriate measures to ensure that the implementation of the relevant legislation respects fully Article 11 of the European Convention of Human Rights (hereafter the Convention), as interpreted by the European Court of Human Rights;

16.3. a climate of confidence should be restored, which implies that dialogue between the ruling majority and the opposition, both inside and outside Parliament, should be urgently established;

16.4. political parties and blocs should be given free broadcast time and print space in the state funded media, under equal conditions, as stipulated in the Electoral Code of Azerbaijan;

16.5. all relevant measures should be taken to prepare the ground for a free and fair presidential campaign, as well as elections, so that mistakes from the last ballot are not repeated;

16.6. a clear message should be passed, in time for the 2008 presidential election and at the highest political level, that electoral fraud will not be tolerated.

17. As regards the fight against corruption and money laundering, the Assembly:

17.1. welcomes the efforts made by the authorities to address the problem of corruption, which at present continues to affect all levels of society and threatens the economic growth, as well as the social and political development of the country. In particular, the Assembly welcomes the adoption of a new National Strategy "on increasing transparency and the fight against corruption", as well as of an action plan for its implementation for the period 2007-2011, prepared in close co-operation with the Council of Europe;

17.2. urges the Parliament to adopt the Law on Money Laundering and Counter-Financing of Terrorism, the Law on Conflict of Interest and the Law on Responsibility of Legal Persons for Corruption Offences, in line with Council of Europe experts recommendations;

17.3. urges the Azerbaijani authorities to implement without further delay the recommendations made by the Group of States against Corruption (GRECO) and the Committee of Experts on measures to counter money-laundering and financing of terrorism (MONEYVAL).

18. As regards freedom of expression, the Azerbaijani authorities should:

18.1. initiate the legal reform aimed at the decriminalisation of defamation and the revision of the relevant civil law provisions to ensure respect of the principle of proportionality, as recommended in Resolution 1545 (2007); in the meantime, a political moratorium should be re-introduced so as to put an end to the use of defamation lawsuits as a means of intimidating journalists;

18.2. guarantee the effective prosecution of perpetrators of attacks against journalists;

18.3. implement the recommendations made by the Council of Europe experts on the Law on Television and Radio Broadcasting and the Degree of the President approving the regulations of the National Television and Radio Broadcasting Council and amend the relevant legislation so as to:

18.3.1. clarify the role of the state broadcaster as compared to that of the public broadcaster;

18.3.2. guarantee the independence of the National Television and Radio Broadcasting Council, including from a financial point of view;

18.3.3. define the terms for the award of broadcasting licences more clearly and put an end to state interference with broadcasting.

19. As regards freedom of association:

19.1. the Assembly is particularly concerned by the Khatai District Court's decision of 14 May 2008 to revoke and annul the registration of the Election Monitoring Centre (EMC), a well-known and recognised non-partisan domestic election observation organisation, following an appeal by the Ministry of Justice;

19.2. the Assembly urges 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, as interpreted by the European Court of Human Rights, and to execute the European Court of Human Rights' judgment in the case *Ismayilov v. Azerbaijan*, finding a violation of Article 11 of the Convention.

20. As regards the reform of the judiciary:

20.1. concrete measures should be taken to put an end to the strong influence still exerted by the executive over the judiciary branch;

20.2. the right to a fair trial should be guaranteed and measures should be taken to ensure that the implementation of the relevant legislation respects fully the requirements of Article 6 of the Convention, as interpreted by the European Court of Human Rights;

20.3. the Code of conduct on prosecution bodies should be finalised, adopted and implemented to prevent abuse of power and corruption, in accordance with the 2006 Decree on the reform of the judiciary.

21. As regards the follow-up to the issue of alleged political prisoners:

21.1. the Assembly reiterates its call on the Azerbaijani authorities to make use of every legal remedy (amnesty, review of cases by higher-instance courts, conditional release for health reasons, pardon) so as to settle once and for all this problem;

21.2. the Azerbaijani authorities in particular should release Natiq Efendiyev, Rasim Alekperov, Ruslan Bashirli, Akif Huseynov and Telman Ismayilov;

- 21.3. the Assembly condemns the lack of transparency and fairness in the relevant investigation and court proceedings and demands the immediate release of imprisoned opposition journalists Ganimat Zahidov, Sakit Zahidov and Eynulla Fatullayev.
22. As regards conditions of detention, the Assembly urges the Azerbaijani authorities to:
- 22.1. implement the recommendations made by the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its reports on the two ad hoc visits of January 2004 and May 2005;
- 22.2. authorise the publication of the above mentioned reports without further delay;
- 22.3. take the necessary measures to execute the European Court of Human Rights' judgment in the case *Mammadov (Jalaloglu) v. Azerbaijan*, finding a violation of the Convention's Articles 3 (prohibition of torture) and 13 (right to an effective remedy).
23. As regards other outstanding issues:
- 23.1. the law on alternative civilian service should be adopted without further delay, in line with Azerbaijan's accession commitment;
- 23.2. the law on national minorities should be adopted and the European Charter for Regional or Minority Languages (ETS No. 148) should be ratified, in line with Azerbaijan's accession commitment;
24. As regards Azerbaijan's commitment to the peaceful settlement of the Nagorno-Karabakh conflict:
- 24.1. the Assembly considers that sustainable democratic development will be extremely difficult in Azerbaijan as long as the country's territorial integrity has not been restored;
- 24.2. the Assembly takes note of the United Nations General Assembly Resolution "on the situation in the occupied territories of Azerbaijan", adopted on 14 March 2008, which expresses serious concern that the armed conflict in and around the Nagorno-Karabakh region of Azerbaijan continues to endanger international peace and security, reaffirms Azerbaijan's territorial integrity, expresses support for its internationally recognised borders and demands the immediate withdrawal of Armenian forces from the occupied territories;
- 24.3. the Assembly welcomes the meeting between the Azerbaijani and Armenian Foreign Ministers in Strasbourg, on 6 May 2008, on the sidelines of the meeting of the Committee of Ministers, which they both subsequently qualified as constructive talks. Both Ministers reaffirmed their countries' commitment to seeking a peaceful solution to the Nagorno-Karabakh conflict. The Assembly strongly urges Azerbaijan and Armenia to continue to seek a peaceful solution to the conflict;
- 24.4. the Assembly welcomes the Monitoring Committee's initiative to organise in Berlin, in November 2007, a hearing "on frozen conflicts" including the Nagorno-Karabakh conflict. In this respect, the Assembly reaffirms the role it can play in helping foster a positive negotiating climate, through dialogue at the parliamentary level.
25. The Assembly asks its Monitoring Committee to continue to follow closely developments in Azerbaijan, especially with a view to ensuring that the next presidential election of October 2008 will fully respect Council of Europe standards for free and fair elections.

**B. Explanatory memorandum by Mr Herkel and Mrs Jivkova, co-rapporteurs**

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## I. Introduction

1. On 15 October 2008, Azerbaijan will be holding its second presidential elections since its accession to the Council of Europe in 2001. Regrettably, all previous ballots held since have failed to meet democratic standards<sup>1</sup>.

2. This failure led to the challenging of the credentials of the Azerbaijani delegation at the opening of the Assembly's January 2006 part-session. In its Resolution 1480 (2006), the Assembly finally ratified the credentials of the delegation of Azerbaijan and in its Resolution 1505 (2006) of June 2006 instructed the Monitoring Committee to follow closely the developments in the country and to report back to the Assembly.

3. When adopting its Resolution 1545 (2007) on the honouring of obligations and commitments by Azerbaijan in April 2007, the Assembly considered the co-operation between the Council of Europe and Azerbaijan essential for the development of democracy and the respect for the rule of law and human rights in the country and supported the continuation of this co-operation for the purpose of preparing the 2008 presidential elections.

4. Furthermore, in its Resolution 1457 (2005) on the follow-up to Resolution 1359 (2004) on political prisoners in Azerbaijan, the Assembly concluded that "it [could] not consider the issue of political prisoners to have been finally resolved" and asked the Azerbaijani authorities to take a number of measures in order to find "a speedy and permanent solution to the issue of political prisoners and presumed political prisoners". The Assembly also welcomed the setting up of a task force comprising representatives of the authorities and of human rights NGOs for the purpose of "adopting a single position and approach to the issue of meeting the commitment and eliminating the problem". They had agreed to work on the basis of two lists referred to in Resolution 1457 (2005).

5. In December 2007, a motion for a resolution on the follow-up to the issue of political prisoners in Azerbaijan<sup>2</sup> was tabled, regretting the lack of concrete follow-up given to the Assembly's recommendations and the absence of results in this matter. The motion stressed the present need for a special rapporteur to be appointed, from the Committee of Legal Affairs and Human Rights, with a specific mandate to follow-up the work of previous special rapporteur, Mr Malcom Bruce, on the issue of political prisoners in Azerbaijan<sup>3</sup> and ensure that proper follow-up be given to Resolutions 1457 (2005) and 1545 (2007). On the 13 March 2008, the Bureau decided to postpone its decision on the reference of the motion until June 2008.

6. On 18 March 2008, the Monitoring Committee decided to report to the Assembly, in June 2008, in an interim report on the current state of the functioning of democratic institutions in Azerbaijan, including the follow-up given to the issue of political prisoners.

7. Following the departure of Mr Tony Lloyd from the Assembly, Mrs Evgenia Jivkova was appointed as co-rapporteur on the honouring of obligations and commitments by Azerbaijan on 9 November 2007. It is against this background that we visited Baku twice in 2008, from 4 to 7 February and from 18 to 20 May. We wish to thank the Azerbaijani Parliament and in particular the Chairman of the delegation to the Parliamentary Assembly, Mr Samad Seyidov, and his secretariat, for their excellent organisation of the visits, which enabled us to hold very frank discussions with the authorities at the highest level<sup>4</sup>. We would also like to thank Mr Fikrat Mammadov, Minister of Justice, for his support and assistance in the organisation of the visits to prisons of a number of prisoners mentioned in Resolution 1545 (2007) or convicted after its adoption.

8. We are also grateful to Mr Denis Bribosia, Special Representative of the Secretary General of the Council of Europe in Azerbaijan, and his staff in the Baku Office, for their precious assistance in the

<sup>1</sup> See Assembly reports on election observation missions in Azerbaijan, Doc. 10003 of 27 November 2003 (2003 presidential election), Doc.10751 of 29 November 2005 (2005 parliamentary elections), Doc. 10941 of 13 May 2006 (partial re-run of 2005 parliamentary elections).

<sup>2</sup> Motion for a resolution presented by Mr Pourgourides and others on the follow-up to the issue of political prisoners in Azerbaijan, Doc. 11468

<sup>3</sup> See Doc. 10564 and Doc.10026, reports of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Malcolm Bruce).

<sup>4</sup> We actually met the President of the Republic, the Speaker of Parliament, the Head of Presidential Administration, various Ministers, the Prosecutor General, the Chairman of the Central Electoral Commission, as well as NGOs and media representatives, political leaders from opposition parties, and representatives of the international and diplomatic community.

organisation of meetings with representatives of the civil society, political parties and with representatives of the media and of international organisations.

## II. Economic and international context

9. The country's massive oil revenues have led to a growing self-confidence in Azerbaijan's foreign policy. Export of oil and gas has strengthened the economic position of the country and led to a 25% gross domestic product growth in 2007. The \$4 billion Baku-Tbilisi-Ceyhan (BTC) pipeline - which pumps Caspian Sea oil to the Turkish Mediterranean, bypassing Russia and Iran - should supply 1 million barrels per day by 2009. One of the pipeline's main beneficiaries is Azerbaijan.

10. Moreover, at the GUAM-Organization for Democracy and Economic Development Heads of States Summit, hosted in Baku on 18 and 19 June 2007<sup>5</sup>, and at the G8 summit in Heiligendamm (Germany), in June 2007, President Putin proposed using the radar site of Qabala (300 km North of Baku) for a European missile defence system as a counter proposal to the plan of President George W. Bush to base the system elsewhere in Europe. The Qabala radar station was built in 1987 and is currently rented to the Russian Federation.

11. At the same time, there is a widespread public perception of corruption throughout all facets of society, including the civil service, government ministries and official at the highest level, which could jeopardise the development of the country.

12. The government tries to apply a balanced foreign policy between Russia, Iran and the West. Political life in Azerbaijan is largely influenced by neighbouring and international politics and, in 2008, events such as the unilateral declaration of independence of Kosovo, the presidential elections in Armenia and the ensuing events, or the Turkish military operations in Iraq and the 21 May parliamentary elections in Georgia.

13. The Nagorno-Karabakh conflict continuously dominates the political agenda of the country. In the first week of March 2008, heavy gunfire broke out on the front line which led to several casualties. According to governmental sources, five Azerbaijani soldiers and two civilians were killed in and around the area while several civilians and soldiers were injured. Heavy casualties on the Armenian side were also reported.

14. Today, the Azerbaijani authorities are facing a major challenge as they try to transform important dividends of the oil business into the sustainable development of society.

15. Nevertheless, Azerbaijan clearly opted for European standards in terms of democracy, the rule of law and human rights when it joined the Council of Europe seven years ago.

16. Regrettably, throughout 2007 and early 2008, Azerbaijan has been pointed out by several organisations for its poor human rights record<sup>6</sup>. Restrictions to the freedom of expression, harassment of media representatives, limitations of the freedom of assembly, the lack of follow-up to the issue of alleged political prisoners and the humanitarian concerns raised by several cases, the dysfunctioning of the judiciary system and the conditions of detention are issues of great concern to the co-rapporteurs.

17. All these concerns have their origin in the dysfunctioning of the democratic institutions in the country. The October 2008 presidential elections will be a major test for the Azerbaijani authorities to prove their will to transform the country into a genuine democracy respectful of the rule of law and human rights. Azerbaijan cannot afford to fall short in meeting Council of Europe commitments and standards for democratic elections again.

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<sup>5</sup> with the participation of six Presidents (Azerbaijan, Ukraine, Georgia, Lithuania, Poland and Romania), one vice-President (Bulgaria) and one Prime Minister (Moldova).

<sup>6</sup> See also Human Rights Watch, 2007 World Report on Azerbaijan; Azerbaijan, US State Department Country Reports on Human Rights Practices - 2007, Released by the Bureau of Democracy, Human Rights, and Labour on 11 March 2008; Freedom in the World 2008, the annual survey of global political rights and civil liberties, Freedom House.



### III. Electoral reform and preparation of the October 2008 presidential election

18. One of the basic requirements for a democracy to function is the holding of free and fair elections. Upon its accession to the Council of Europe, Azerbaijan undertook the commitment to “*revise its legislation on elections, particularly the Law on the Central Electoral Commission and the Electoral Law, taking into account the recommendations put forward by the international observers during previous elections,[...]*” (Opinion No. 222 (2000)).

#### *i. Previous ballots*

19. All ballots held since Azerbaijan’s accession have generally failed to meet basic democratic standards. The 2003 presidential election was marred by massive fraud and violence and lacked transparency, casting doubts on the credibility of the electoral result. The ensuing waves of violence led to arbitrary arrests of opposition supporters and elections observers and officials and politically motivated dismissals. The excessive use of force by the Azerbaijani security forces resulted in the death of at least one protester and the injuring of hundreds of others<sup>7</sup>.

20. The 2005 parliamentary elections were more orderly and transparent than previous national elections, although still marred with irregularities. The lack of independence of local electoral commissions, which had been subject to interference, pressure and intimidation from the local authorities in the polling stations during the voting and serious impediment to the right to peaceful assembly and disproportionate use of force by the police in dispersing unauthorised rallies remained however a serious concern<sup>8</sup>.

21. Fraud and major irregularities also marred the vote counting and tabulation process. The International Election Observation Mission assessed the ballot counting process as bad or very bad in 43 percent of polling stations observed, where officials reportedly attempted to complete official tabulation protocols behind closed doors.

22. Moreover, following the ballot, the Central Electoral Commission and the Constitutional Court did not satisfactorily address reports of fraud and other irregularities.

23. In October 2006, the authorities held a partial re-run of municipal elections following the invalidation of the results of 2004 local elections in 141 municipalities, because of irregularities and complaints. The opposition Azadliq bloc, comprised of the Popular Front Party, the Azerbaijan Democratic Party and the Azerbaijan Liberal Party, boycotted the municipal elections, asserting that the composition of local electoral commissions made the elections inherently unfair.

#### *ii. Preparation of the October 2008 presidential election*

24. To date, opposition parties play a less active role in politics than in previous years. The aftermath of the November 2005 parliamentary elections was marked by a further weakening of the opposition both inside and outside parliament. Subsequent splits within the opposition have further weakened its position.

25. Members of the opposition complained to us that the situation had deteriorated in comparison with the previous years and that there were neither conditions nor possibilities for democratic elections in Azerbaijan as constitutional rights and freedoms of citizens were limited. Mr Ali Kerimli, the Chairman of the Popular Front Party of Azerbaijan (PFP), informed us that they would only take part in the elections if the Electoral Code as well as the composition of electoral commissions were amended, the freedom of assembly in the capital and in the regions unrestricted, all the alleged political prisoners released, media pluralism ensured and normal conditions established for the activity of political parties<sup>9</sup>.

26. The current lack of public confidence in the electoral process directly threatens the credibility of the forthcoming elections. Dialogue urgently needs to be established between the ruling majority and the opposition both inside and outside parliament if the political climate in the country is to be improved.

<sup>7</sup> See Ad hoc Committee to observe the presidential election in Azerbaijan (15 October 2003), Doc. 10003 of 27 November 2003.

<sup>8</sup> See Ad hoc Committee to observe the parliamentary elections in Azerbaijan (6 November 2005), Doc.10751 of 29 November 2005.

<sup>9</sup> For several years now, Mr Kerimli has been refused a passport and can still not travel abroad. See Doc. 11226 footnote 6 for details of this case.

27. Since accession to the Council of Europe, the Parliament of Azerbaijan has reinforced its position vis-à-vis the other state institutions. However, much remains to be done to strengthen parliamentary control of the executive and improve the checks and balances in a state governed by a strong presidential system<sup>10</sup>.

28. Our interlocutors from opposition parties complained about limitations of their rights to freedom of assembly. The situation is said to be sometimes worse in the regions where local authorities reportedly take action to prevent routine party activities. They reported that police officers often dispersed small gatherings at tea houses and detained participants for questioning.

29. We are concerned about the last developments on the political scene and the two dubious television programmes referring to homosexuality - which is still considered a deeply shameful subject in the Azerbaijani society - and aiming at discrediting the opposition.

30. This kind of outrageous behaviour only leads to further deterioration of relations between the authorities and the opposition.

31. Concerning the campaign itself, the Electoral Code of Azerbaijan provides that political parties and blocs are entitled to free broadcast time and print space, under equal conditions in the state funded media. However, the Chairman of the National TV and Radio Broadcasting Council regretted that no precise regulations provided for the allocation of time to candidates on private channels. It is worth noting that the National TV and Radio Broadcasting Council is still financially dependent on the government so that its independence from the Executive is not guaranteed.

32. At the time of our visit in May, an amendment to the Electoral Code was being discussed in Parliament, providing for the State TV to be replaced by the Public TV to cover the election campaign, assigning air time in accordance with the legislation on advertising.

33. So far, two presidential candidates have officially announced their candidature: the incumbent President, Mr Ilham Aliyev, and the Chairman of the Public Forum For the Sake of Azerbaijan, Mr Eldar Namazov.

34. We urged all political parties to take part in the elections and underlined the importance of the adoption and proper implementation of the law on freedom of assembly, as well as of the freedom of the media in the light of the forthcoming presidential elections.

35. We also urged the Azerbaijani authorities to pass on a clear message in time for the 2008 Presidential elections and at the highest political level, that neither electoral fraud nor restrictions of freedoms will be tolerated in the forthcoming elections.

### *iii. Reform of the Electoral Code*

36. For the last parliamentary elections in 2005-2006, the electoral legislation had been only partially amended in line with the recommendations repeatedly made by the Venice Commission. The Azerbaijani authorities eventually requested the assistance of the Venice Commission for the reform of the Electoral Code of Azerbaijan just before the May 2006 re-run elections.

37. In Resolution 1505 (2006), adopted in June 2006, the Assembly urged *“the authorities of Azerbaijan to amend the provisions regarding the composition of the electoral commissions at all levels so as to establish an election administration which enjoys the confidence of the electorate and of all the stakeholders and to further develop the procedure for an efficient handling of election-related complaints and appeals with the assistance of the Venice Commission.”*

38. To date, some recommendations repeatedly made by the Parliamentary Assembly, the Venice Commission and the OSCE/ODHIR, which are crucially important for the 2008 Presidential election, have not been addressed or are insufficiently addressed. At the time of our visit in May, the amendments to the Electoral Code were precisely under discussion in Parliament. On 2 May 2008, the President of Azerbaijan presented to the Parliament a draft law on the Amendments to the Electoral Code of Azerbaijan, which was subsequently discussed on 14 May by the Committee on Legal Policy and State Construction of the Parliament. The discussion of the draft in the plenary is due to be held by the end of May or early June 2008.

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<sup>10</sup> See Doc. 11226 and Resolution 1545 (2007) on the honouring of obligations and commitments by Azerbaijan, adopted on 16 April 2007.

39. The Venice Commission adopted a joint-interim opinion with OSCE/ODIHR on the draft Electoral Code at its 74th Plenary Session on 14-15 March 2008. In its opinion, the Venice Commission considered that the current Electoral Code remains far too complex with unnecessary repetitions, especially in the provisions on the registration of candidates, campaign financing, lists of persons entitled to conduct pre-election campaigns and limitations on the content of election campaign material.

40. The most important issues on which the Azerbaijani authorities are invited to co-operate with the Venice Commission with a view to revising the Electoral Code are: the composition of the Central Electoral Commission (CEC) and territorial electoral commissions; the voters' list and its accuracy, as well as the complaints and appeals procedures.

41. The CEC is composed of 18 members elected by Parliament (6 from the majority party, 6 from the minority parties and 6 representing independent members of Parliament); 16 members have now been elected and the CEC has the required quorum to function. We urged all parties to agree on the designation of the two remaining members.

42. The existing provisions in the Electoral Code are not sufficient to ensure that the commissions are not dominated by pro-government forces. The procedures on the designation of the members of the CEC, but also of the territorial electoral commissions and the precinct electoral commissions, should be revised in order to ensure a more balanced representation of different political forces. Independent candidates in the CEC and territorial electoral commissions should be agreed upon by consensus and we encourage all parties to ensure the effective work of territorial commissions, as well as the fair distribution of the posts of Chairman, Vice-Chairman and Secretary (1/3 for the majority party, 1/3 for the opposition, 1/3 for the independents). Moreover, an efficient complaints and appeals procedure should be guaranteed.

43. All 32 000 members of territorial and precinct electoral commissions will be trained by national and international experts before the elections. A major effort in modernisation of premises of electoral commissions has been made and each of the 125 constituencies will be provided with their own modern and appropriate premises by the day of the elections.

44. The current Electoral Code provided for the updating of the voters' list to be dealt with between January and May 2008. The 4,830 million voters' list was thus currently being updated at the time of our visits. The procedure has been simplified: while in the past an appeal to the court was necessary, a simple request accompanied by a proof of residence can now induce the correction of the voters' list. In this regard, the Chairman of the CEC is confident that all relevant measures have been taken so that mistakes from the last ballot will not be repeated.

45. A positive development has been the Presidential decree of October 2005 which introduced the marking of voters' fingers with invisible ink. We were informed by the authorities that mandatory inking would be introduced in the Electoral Code with the amendment to the Electoral Code currently underway.

46. The process of registration of candidates is still a matter of concern. Registration can be refused in a number of cases. The possibility to de-register a candidate just before the election day, with no real possibility to appeal and have a decision in time for the elections, is another major problem of the current legislation. We were informed that an amendment to the Electoral Code foresees an increase of the registration deposit up to 300 000 Manats (about 230 000 Euros), which is to be voluntarily used if a candidate does not collect the required 45 000 signatures required for candidates' registration. The opposition complained that this new provision, if adopted, would constitute a major obstacle for the registration of opposition candidates.

47. We urge that the amendments to the draft be finally adopted in full compliance with the Venice Commission's and ODIHR recommendations. We consider that this is a fundamental prerequisite for the democratic credibility of the country.

48. Concerning observers to the electoral process, a positive development was the signing of a presidential decree in 2005 which reversed the ban on election observation by NGOs receiving financial support from international sources. However, the change had no impact on the 2005 parliamentary elections, as all observers were required to have registered in advance but domestic election observers were generally able to register as individuals.

49. In this respect, we are concerned about the recent revocation of the Election Monitoring Centre (EMC) following an appeal by the Ministry of Justice. EMC is one of Azerbaijan's most experienced non-partisan

domestic election observation organisations. This development clearly contradicts the statement made by the authorities about their will to hold free and fair elections.

#### IV. The fight against corruption and money laundering

50. The World Bank's worldwide governance indicators reflected that corruption was a severe problem. In Transparency International's corruption perception index 2007, Azerbaijan ranked 130 (out of 163) in the corrupt countries.

51. According to the Group of States against Corruption (GRECO)<sup>11</sup>, Azerbaijan was making substantial efforts to address the problem of corruption but still appeared to be extensively affected by corruption at all levels of society, which could jeopardise the strong economic growth and represent a threat to its social and political development.

52. Following the amendment of the law on combating corruption and the related presidential decree of 3 March 2004, the latest "National Strategy on increasing transparency and the fight against corruption" was adopted in July 2007 by presidential decree. The National Strategy, as well as the action plan for its implementation in 2007-2011, have been prepared in close co-operation with the Council of Europe.

53. A law on rules of ethics and conduct of civil servants was adopted in June 2007. However, Azerbaijan has still not introduced comprehensive preventive legislation as regards anti-money laundering and countering the financing of terrorism. The draft laws on money laundering and counter-financing of terrorism, on conflict of interest and on responsibility of legal persons for corruption offences have been reviewed by the Council of Europe and should be adopted by the Parliament very soon, hopefully in spring this year. Once again, concrete measures to ensure an effective and efficient implementation of the relevant legislation should be taken immediately after adoption.

54. We believe that the fight against corruption should be a high priority for all state institutions. We recommend that a Committee on the fight against corruption be set up within the Parliament to foster the implementation of the National Strategy. The recommendation made by GRECO and the Committee of Experts on measures to counter money-laundering and financing of terrorism (MONEYVAL) should be implemented without further delay.

#### V. Fundamental rights and freedoms

##### i. Freedom of expression

##### a. The press

55. Upon its accession to the Council of Europe, Azerbaijan undertook 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)*).

56. In Resolution 1505 (2006), adopted in June 2006, the Assembly recalled the many concerns it had expressed about violent incidents directed against journalists. It reiterated its concerns in Resolution 1545 (2007)<sup>12</sup>.

57. Azerbaijan ranks as 139<sup>th</sup> out of 169 countries in the 2007 Reporters without Borders Worldwide Press Freedom Index Ranking.

58. All human rights NGOs and media representatives, as well as representatives of political parties from the opposition that we met during our visits in February and May 2008, spoke about a deterioration of the human rights situation and in particular of the freedom of speech in the country in 2007<sup>13</sup>. In their view, the media situation continues to deteriorate ever since the murder of Elmar Huseynov, the editor-in-chief of the *Monitor Magazine* who was gunned down in March 2005.

59. We are concerned about the recurrent attacks against the most vocal opposition newspaper *Azadliq* and in particular the arrests, judicial proceedings and incidents of violence against its reporters and staff, as

<sup>11</sup> See GRECO Eval I-II Rep (2005), 23 June 2006

<sup>12</sup> See a list of incidents of physical attacks against journalists after the adoption of Resolution 1545 (2007) in Appendix I

<sup>13</sup> See also the last report from Amnesty international, *Azerbaijan : mixed messages on freedom of expression*, February 2008; <http://www.amnesty.org/en/library/info/EUR55/002/2008>

well as intimidation through financial pressure. During our May visit, media representatives described a climate of fear within the *Azadliq* newspaper, created by the threats and pressure exerted on the staff and their relatives' life<sup>14</sup>.

60. We are particularly concerned about the case of *Azadliq* reporter, Agil Khalil, who was stabbed by an unidentified person on 7 May 2008. We fail to understand why the authorities have forbidden Mr Khalil to leave the country pending the investigation, while he has been the victim of several physical attacks. Moreover, the Head of the Public Prosecutor's Office, Vugar Aliyev, made a statement to the press, taking position on the case and accusing Mr Khalil of "spreading unjustified statements about his being tracked and attacked by unknown people"<sup>15</sup>, therefore interfering with the ongoing investigation.

61. Most newspapers and magazines are printed in government publishing houses or on private printing presses owned by individuals close to the government. The majority of independent and opposition newspapers remain in a precarious financial position facing regular problems paying wages, taxes and court fines. The authorities prohibit some state libraries from subscribing to opposition newspapers.

62. The economy is monopolised at every stage to the extent that the lack of a free market of advertising in the newspapers hinders the development of a free and pluralist press in the country. State companies are not allowed to buy advertising in opposition newspapers and private companies are reportedly put under pressure to do the same.

63. On 7 May 2008, President Ilham Aliyev signed a decree stipulating that a free copy of every published magazine must be sent to the Press Council.

64. All media representatives we met consider that public officials use defamation suits to prevent the publication of embarrassing or incriminating information<sup>16</sup>. According to the Criminal Code of Azerbaijan, defamation can be punished with up to three years' imprisonment.

65. The Assembly, the Secretary General and the Commissioner for Human Rights, as well as the OSCE Representative on freedom of media have repeatedly called on the Azerbaijani authorities to decriminalise defamation.

66. In his November 2007 report to the OSCE's Permanent Council, the Representative on Freedom of the Media of the Organisation for Security and Cooperation in Europe (OSCE), Mr Miklos Haraszti, described the situation of the independent media in the country as "grave". In April 2008, he took a strong critical position on the situation on mass media in Azerbaijan expressing his concern over the continuing persecution of investigative journalists: "Azerbaijani law enforcement agencies have recently fabricated accusations against several independent investigative journalists. This is especially regrettable in a democracy that has overcome the era when prosecutors faked cases against those with ideas that the government did not like".

67. In 2007, there were more than 100 cases where media representatives were taken to court. This indicator is ten times higher than in 2005. The initiators and authors of 90% of claims and accusations against journalists were high-ranking state officials. The local courts sentenced 9 journalists. All these journalists and the bodies for which they work are known for being critical of the government.

68. A Presidential pardon decree issued on 28 December 2007 included six journalists, but regrettably the three journalists associated with the most vocal opposition newspapers, the two Zahidov brothers (Sakit and Ganimat) and Mr Fatullayev, did not benefit from it.

69. The authorities consider that the problem of journalists' arrests is linked to their lack of professionalism and ethics and point at this as the cause of the high number of defamation suits.

70. Therefore, they do not envisage any legal reform aiming at the decriminalisation of defamation (which they claim exists in other European countries) nor the revision of relevant civil law provisions to ensure respect for the principle of proportionality, as recommended in Resolution 1545 (2007). However, the Azerbaijani authorities welcomed and encouraged the assistance of the Council of Europe and other international organisations in the training of journalists and judges.

<sup>14</sup> Since the incarceration of the Editor-in-Chief Ganimat Zahidov, the publication saw its human resources reduced by half (from 40 employees to 20).

<sup>15</sup> *Authorities ban Agil Khalil's leaving Azerbaijan*, Turan news, Baku, 12.05.08

<sup>16</sup> See a list of judicial proceedings pending against journalists in appendix 1.

71. 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.

72. We stress that arbitrary actions against journalists are undemocratic and contrary to Article 10 of the European Convention on Human Rights (ECHR). The right to freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference from the authorities. There are also doubts whether the severe sentencing of journalists for alleged defamation is in line with Council of Europe standards. There is a need to train judges on the case-law on Article 10 ECHR and strengthen their independence.

73. The Council of Europe has now initiated a substantial project aimed at improving the level of journalism in the country. The Azerbaijani authorities should also take some initiatives to abide by their commitment and comply with the requirements of Article 10 ECHR.

74. We reiterate that the Azerbaijani authorities should initiate the legal reform aiming at the decriminalisation of defamation and the revision of relevant civil law provisions to ensure respect of the principle of proportionality as recommended in Resolution 1545 (2007), paragraph 8.2.

75. Pending revision of the legislation, the President of Azerbaijan should reintroduce his 2005 political moratorium and appeal to public officials to refrain from starting legal proceedings against journalists for defamation.

76. At the same time, we encourage efforts aiming at improving the professional standards and ethics of journalists in Azerbaijan. Journalists themselves should strive for such improvements. Council of Europe assistance could be sought for sustainable training mechanisms both for journalists students and professionals.

77. We also believe that the Azerbaijani authorities should ensure the respect for journalists by guaranteeing the effective prosecution of perpetrators of attacks against journalists.

*b. Radio and Television*

78. Some private television channels broadcast the views of both government and opposition officials, but their programmes are not available in all parts of the country. ANS TV, a popular channel regarded as independent, provides relatively balanced news coverage, although opposition political party leaders complain that no television station covers their activities.

79. The National Television and Radio Council (NTRC) oversees the operation of electronic media. In June 2007, the Council of Europe addressed an expertise to the Azerbaijani authorities on the draft law on Television and Radio Broadcasting and on the Decree of the President approving regulations of the NTRC.

80. The Council of Europe experts welcomed a number of progressive provisions and the affirmation of fundamental principles such as the freedom of information and speech, pluralism, objectivity and quality of broadcasting, as well as the precedence of international law. At the same time, though, the experts underlined that the greatest problem with the law was the extensive state interference with broadcasting. The law refers to targeted state programmes and other direct state intervention in broadcasting, including the state ordering special programmes or sponsoring broadcasting. Also, the Council of Europe experts regretted that the NTRC is not an independent body, since all its members are actually appointed by the President of the Republic who is also empowered to issue instructions to the NTRC. Moreover, the procedure in place for awarding licences does not contain any criteria or public-policy objectives.

81. The NTRC is directly funded from the state budget, which allows direct political pressure by the government. The Chairman of the NTRC actually confirmed to us that the situation remains somewhat blurred as the council is not treated as a public administration body (notably as regards civil servants' increase of salaries) but could not establish its own budget either. He also noted that the NTRC often invited leaders of political parties to participate in various programmes, but they refused to do so.

82. We regret that no concrete follow-up has been given to the Council of Europe expertise and encourage the Azerbaijani authorities to take the necessary measures to make the NTRC an independent body with clear functions and regulations. In particular, the law should be amended so as to clarify the role of the state broadcaster as compared to the public broadcaster, ensure the financial independence of the NTRC and

define the conditions for the awarding of broadcasting licences more clearly. Moreover, the NTRC should draft clear guidelines for licence holders and fulfil its monitoring duties.

*c. Internet*

83. As regards the Internet service, providers have to be licensed and to have formal agreements with the Ministry of Communications and Information Technologies.

84. Media representatives, representatives of the opposition parties and human rights defenders complained that the NTRC considers it its duty to control also the information broadcast on the Internet in order to ensure that regulations and law also apply to this media. They fear that such a control would actually lead to censorship especially since the independence of the Council was subject to doubt. They reported that, on several occasions during 2007, the government temporarily blocked public Internet access to a Web site popular for criticizing the president. During our visit in February, the Chairman of NTRC explained that Internet represented a new and complex development of technology and an important matter which needed regulations and was thus on the NTRC's agenda.

85. We are particularly concerned about reports on the recently created Co-ordination Council by the Ministry of Communications and Technologies which is working on a limitation plan for Internet access. We share the fear of Mr Osman Gunduz, Chairman of the Internet Forum of Azerbaijan, that such a plan could lead to further restrictions on freedom of expression in the country.

*ii. Freedom of assembly*

86. Unacceptable violations of the freedom of assembly were one of the reasons for which the credentials of the Azerbaijani delegation were challenged in January 2006.

87. Violations of freedom of assembly in Azerbaijan have 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.

88. In its Resolution 1545 (2007), paragraph 8.7, the Assembly welcomed the fact that the authorities of Azerbaijan had shown the political will to amend the 1998 law on freedom of assembly and had requested the assistance of the Venice Commission; it urged them to amend the law in line with the recommendations made by the latter and take appropriate measures to ensure that the implementation of the relevant legislation respects the guarantees of Article 11 ECHR as interpreted by the European Court of Human Rights. Most regrettably, violations of the freedom of assembly and the excessive use of force by law enforcement agents have not yet stopped.

89. The authorities of Azerbaijan are committed to co-operating with the Venice Commission on the reform of the 1998 law on freedom of assembly. Draft amendments to the 1998 law on freedom of assembly were submitted to the Venice Commission by the authorities in November 2007. The Venice Commission approved an Opinion on these amendments at its meeting in December 2007<sup>17</sup>. It commended the commitment shown by the Azerbaijani authorities to remedy the shortcomings of the law on freedom of assembly of 1998, currently in force, following the suggestions made by the Commission in its Opinion of October 2006 and in consultation with the rapporteurs and the OSCE Mission in Baku, as well as with ODIHR. Significant improvements have been proposed. If these proposals are adopted by the Parliament in this form, including the remaining modifications which are set out in this opinion, the law will meet European standards. Due implementation of the law will then be crucial.

90. The Venice Commission further underlined that the law must be applied and interpreted by the administrative authorities, the courts reviewing their decisions and the police in a manner which respects the standards which have inspired it. They must show a presumption in favour of assemblies. This will require extensive discussions, including with the civil society, and specific training. The Venice Commission expressed its readiness to assist the Azerbaijani authorities in this process.

91. The adoption of the draft law by the Parliament is on the agenda of its spring session. During our visit in May, the Azerbaijani authorities confirmed to us that the draft had taken into account all the recommendations made by the Venice Commission.

<sup>17</sup> Opinion on the Draft amendments to the Law on Freedom of Assembly of Azerbaijan, adopted by the Venice Commission at its 73<sup>rd</sup> Plenary Session (Venice, 14-15 December 2007) (CDL-AD(2007)042).

92. Pending adoption of the amendments, the law as it stands today provides for numerous cases of automatic prohibition on holding an assembly. Our interlocutors representing human rights defenders and opposition parties complained that most public rallies or demonstrations had to be cancelled at the last minute following a decision by the local administration to change the venue for the protest action. In some cases, demonstrations were interrupted by the police and party members were arrested; in most cases they were released after a short period of time or in other instances, after having paid fines. During our meeting with Mr Mehdiyev, Head of the Presidential Administration, we were informed that the Baku Mayor's office had offered seven different venues for the opposition to hold their rallies, which had all been declined by organisers on the ground that they were not central enough.

93. Moreover, a variety of religious communities complained that the authorities periodically and selectively harassed registered and unregistered religious groups. There were also some reports of police intimidating representatives of these groups<sup>18</sup>.

94. 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<sup>19</sup>.

*iii. Freedom of association*

95. The government took a number of measures regulating the activities of political parties, religious groups, legal persons and NGOs, including a requirement that all organisations register either with the Justice Ministry or the State Committee on Work with Religious Associations (SCWRA). We fear that such measures may lead to a restriction of the freedom of association in practice.

96. Whereas the law requires the government to act on registration applications within 30 days of receipt, non-transparent registration procedures are still resulting in long delays. According to a 2003 provision, all existing NGOs have to re-register with the Justice Ministry which often delays or simply denies registration to some previously registered groups, often citing the failure of applicants to follow proper procedures. According to figures provided to us by the Minister of Justice during our May visit, the Ministry registered 361 NGOs in 2007. Over 2,300 NGO's are registered to date in Azerbaijan.

97. As a follow-up to the 2006 Presidential Decree on the National Action Plan on the Protection of Human Rights (NAP), a Task Force comprising all relevant public institutions and NGOs and chaired by the Ombudsperson was set up in May 2007 to implement the NAP. The Task Force set up five working groups of experts working on the different fields of activities covered by the NAP.

98. A presidential decree was adopted on 13 December 2007 setting up the National Council for NGOs, as well as providing a set of principles governing public financial support to NGOs, which includes the establishment of the Council for State Support to NGOs. The fact that all 11 members of the council are appointed by the President, even if 8 of them are proposed by the NGOs themselves, gives rise to concern as regards the independence of the institution. That said, the regulations of the Council of State Support to NGOs provide for fair, objective and transparent procedures for the allocation of funds. The future work of this new council for NGOs will prove its independence or otherwise.

99. On 17 January 2008, the European Court of Human Rights condemned Azerbaijan for violation of Article 11 ECHR (freedom of association) in the case *Ismayilov v. Azerbaijan* and awarded Mr Ismayilov 1,000 Euros for non-pecuniary damage.

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<sup>18</sup> On 20 May 2007, police raided the meeting of a Baptist community in Aliabad and detained the pastor, Zaur Balaev. Officials claimed the pastor resisted the police, which is denied by pastor Balaev and witnesses. Balaev was sentenced in July to two years' imprisonment. He was later pardoned by the presidential decree of 18 March 2008, following the intervention of the former United States President Jimmy Carter.

<sup>19</sup> In this context we are deeply concerned by President Aliyev's statement at the Police Academy graduation ceremony on 2 July 2007. President Aliyev stated that "not a single police officer" would be punished for actions taken while breaking up several post-elections rallies in 2005 because the police had prevented "illegal criminal actions." In the same speech, the President stated that law enforcement agencies would be in line with European Union standards within the next five years.



100. We can only but express concern about the revocation and annulment of the Election Monitoring Centre's registration as an NGO following an appeal by the Legal Persons Registration Department of the Ministry of Justice on 14 May 2008 on the grounds that the organisation gave incorrect information about its founders and legal address and opened eight branches in the regions without informing the Justice Ministry.

*iv. The right to fair trial, follow-up to the issue of alleged political prisoners and humanitarian concerns*

*a. The right to a fair trial and the reform of the judiciary*

101. Lack of transparency and fairness in the court proceedings undeniably leads to serious concerns as to their compliance with Article 6 ECHR. In a number of judgments on Azerbaijan, the European Court of Human Rights found a violation of article 6; their execution is currently pending.

102. The Azerbaijani authorities have been co-operating closely with the Council of Europe on the reform of the judiciary since 2000 with a view to ensuring greater independence of judges and improving the procedures of selection and appointment of judges. Judicial corruption and lack of independence of the judiciary remain serious problems in Azerbaijan and we welcome the open and constructive attitude of the Azerbaijani authorities who are fully aware of the need to further reform and train the judiciary, effectively eradicate corruption among judges and improve the negative image of justice in the country.

103. The reform lies less in the letter of the law, which actually provides for an independent judiciary, than in its implementation and in addressing the strong influence still exerted over the judiciary by the executive branch.

104. Among the relevant reforms, the setting up of the Judicial Legal Council in 2005 was a major step forward for ensuring, in the long run, the smooth functioning of the judicial system.

105. We met with several members of the Judicial Legal Council who showed great determination in their tasks. The selection, transfer and promotion of judges, evaluation of performance and lifting of the immunities of judges are among the Council's tasks. Its 15 members are appointed by the President, Parliament and the Constitutional Court and include: the Minister of Justice, the Chairman of the Supreme Court, two judges from the Courts of Appeal and the first instance courts, a judge of the Supreme Court, a judge from the Nakhichevan Autonomous Republic and representatives from the Bar Association, the Prosecutor's Office and the Ministry of Justice. The Council is currently chaired by the Minister of Justice, which raises concerns in terms of separation of powers.

106. The reforms also provided for new recruitment procedures for judges, extended to judges the financial requirements set forth in the 2004 law on combating corruption, including the submission of tax returns and restrictions on gifts, provided for the creation of a committee to select judges and established a training programme for candidates for the judiciary. A channel for individuals and legal persons to complain about alleged judicial corruption was created. Citizens can appeal directly to the Judicial Legal Council which has the power to initiate proceedings against judges accused of corruption.

107. As regards the selection procedure of judges, a series of examinations have been organised since 2006 to recruit new judges in what we heard was a fair and transparent selection procedure drawn up in co-operation with the Council of Europe. The candidates who are successful in the written examination are subsequently interviewed by the Judicial Legal Council, which then submits the list for the President's approval. The Executive has still the final word in the new selection procedure and the co-rapporteurs received several complaints about the lack of transparency in the oral interview process.

108. Moreover, the fact that the President of Azerbaijan appoints Supreme Court, Appellate Court and Constitutional Court judges (subject to parliamentary confirmation) and lower court judges (without parliamentary confirmation) can easily lead to a practice where judges do not perform their tasks independently of the executive branch.

109. The progress made in creating the legislative and institutional framework for the judicial system is promising in terms of the creation of an independent judiciary in Azerbaijan. However, the lack of effective and systematic implementation of the law remains a major obstacle to the proper functioning of the judicial system. For example, at present, judges often decide whether or not to hear a case without relying on any specific legal provisions.

110. The low salary and heavy workload of judges is still a major problem for the judiciary in the country. Azerbaijan has only 4.06 judges per 100 000 people. Despite a recent significant increase, the annual salary

of a local court judge in the country is 11 635 US\$. Reportedly, judges routinely accept bribes or receive instructions from the executive branch, particularly in cases of interest to international observers.

111. Another problem is that bailiffs lack the power, skills, resources and initiative to enforce court decisions. Failure to enforce court decisions further undermines trust in the judicial system. The lack of qualified lawyers remains another issue of concern. The reinforcement of the defence bar is critical for preventing human rights abuses and protecting the rights of the defendants in criminal proceedings.

112. The Prosecutor General informed us about a draft Code of conduct on prosecution bodies that is under preparation. A Code of conduct for judges also remains to be drafted to prevent abuse of power and corruption, in accordance with the 2006 Decree on the reform of the judiciary.

113. Domestic and international observers of trials stressed that numerous violations of the law occurred during alleged politically motivated trials: provisions for the presumption of innocence in criminal cases, the right to review evidence, the defendant's rights to confront witnesses and present evidence at trial, the right to a court-approved attorney for indigent defendants and appeal for defendants and prosecutors are rarely respected in practice. Lawyers of prisoners we met also complain that prosecutors' privileges and rights outweighed those of the defence, even though the Constitution prescribes equal arms for prosecutors and defence lawyers.

*b. Follow-up to the issue of alleged political prisoners and humanitarian concerns*

114. The serious dysfunctioning of the Azerbaijani judicial system has resulted in the creation of new cases over the last years in which persons find themselves charged and tried for offences, such as attempted coups d'Etat, offences against state security or terrorism, which do not always correspond to the facts.

115. In Resolutions 1457 (2005) and 1545 (2007), the Assembly concluded that it "[could] not consider the issue of political prisoners to have been finally resolved" and asked the Azerbaijani authorities to take a number of measures in order to find "a speedy and permanent solution to the issue of political prisoners and presumed political prisoners".

116. A motion for a resolution "on the follow-up to the issue of political prisoners in Azerbaijan" was tabled by several members of the Legal Affairs and Human Rights Committee mid-December 2007. Consequently, the possible appointment of a special rapporteur on this issue was crucially important for all interlocutors we met in February and was raised in every single meeting we had.

117. All interlocutors from the authorities' side underlined that the 28 December 2007 Presidential pardon decree, issued after the motion was tabled, allowed the release of 114 persons from serving their remaining sentences while the prison term of 5 prisoners was reduced. The official position remains that all alleged political prisoners appearing on the human rights defenders lists are common law prisoners who have been prosecuted on criminal charges and therefore cannot be released. The authorities considered that the appointment of a special rapporteur on political prisoners would be a blow to relations between the Council of Europe and Azerbaijan. All official interlocutors insisted on the same message: the issue of political prisoners was closed and they did not understand why the Assembly would apply such double standards, i.e. talking about political prisoners in Azerbaijan and simultaneously remaining silent on political prisoners in other Council of Europe member states.

118. We attended a meeting of the Task Force on alleged political prisoners on 7 February 2008. This Task Force is in charge of the follow-up given to Assembly Resolution 1457 (2005) and comprises the major NGOs active in the field of human rights, a number of MPs (notably the Chairman and members of the Assembly Delegation) and officials from the Presidential Administration, the Ministry of Justice and the Ministry of the Interior.

119. Genuine efforts have been made by the parliamentary delegation of Azerbaijan to the Assembly in the search for a final solution to this issue. The 2007 December Presidential decree encouraged the Task Force to continue its work and produce further results.

120. However, the Task Force needs to be reinforced and its efficiency increased. We are still expecting the Task Force to produce an up-date of the June 2005 lists indicating to us how many cases have since been resolved. The only figures available today come from human rights defenders' organisations. It is for the Task Force to study other cases which need consideration, including on humanitarian grounds. The Special Representative of the Secretary General of the Council of Europe in Baku (SRSG) is regularly attending the meetings of the Task Force. The Task Force could consider his assistance in the organisation and follow-up

of the meetings and the Assembly could ask the Secretary General to allow the SRSG to report in writing on the Task Force activities to our committee.

121. When adopting its Resolution 1457 (2007), the Assembly had hoped that the Azerbaijani authorities would “find a speedy and permanent solution to the issue of political prisoners”, by releasing the remaining political prisoners or by allowing retrials and that they would actually “make use of every legal remedy (amnesty, review of cases by higher-instance courts, conditional release, release for health reasons, pardon) to settle this problem”.

122. However, to date, the work of the Task Force has not lived up to expectations: no amnesty law has been adopted for the cases under its consideration nor is being envisaged by the Parliament and, in some cases, prisoners released through Presidential decrees have been re-arrested a few months later. Furthermore, in the particular context of a Presidential election year, numerous arrests of journalists, incidents of intimidation, reports of violence and threats against the opposition and independent media, create a climate of fear and tensions within society.

123. It is worth noting that, on 8 May 2007, the Parliament passed an act granting amnesty to 9,000 persons who had been convicted of petty crimes but none of these individuals falls within the category of persons for whom the Assembly or the Task Force have been concerned for a number of years.

124. The Pardoning decree of 28 December 2007 led to the release of a number of prisoners. 17 prisoners appearing on the list of human rights defenders were released, including six journalists. However, the 3 journalists working in the most vocal opposition newspapers did not benefit from the decree (the two Zahidov brothers and Mr Eynulla Fatullayev). None of the prisoners referred to in Resolution 1545 (2007) has been released either.

125. During our visit in February, we handed a letter to President Aliyev asking him to release the remaining political prisoners mentioned on the human rights NGOs lists of alleged political prisoners.

126. On 18 March 2008, President Aliyev signed another decree ordering the pardon of 59 prisoners. All but one prisoner were released ahead of the Novruz Holiday (20-28 March). The sentence of one prisoner was halved. Six people whose name appeared on the human rights NGOs lists of alleged political prisoners benefited from the pardon decree. Again, the three imprisoned journalists did not benefit from it

127. It is worth noting that, on 24 April 2008, Mr Eynulla Fatullayev, Mr Sakit Zahidov and Mr Ganimat Zahidov were awarded the Hellmann/Hammett grants, administrated by Human Rights Watch, in recognition of their work.

*c. Particular cases of prisoners followed closely by the Assembly*

128. Prisoners whose state of health gives cause for concern and to which the Assembly has drawn the authorities' attention on several occasions remain in prison for reasons we fail to understand.

129. Moreover, the strict application of the law on conditional release could enable the immediate release of dozens of prisoners, without even requiring any pardon decree.

130. During our visit, we requested the authorities, in particular the President of Azerbaijan, to consider the release of several prisoners whose names we received from NGOs, including those mentioned in Resolution 1545 (2007) (Natiq Efendiyev, Rasim Alekperov, Ruslan Bashirli, Ramin Tagiyev) and/or in the April 2007 report (doc. 11226) (Sahavat Gumbatov, Akif Huseynov and Telman Ismayilov). We also urged that the three imprisoned journalists whom we met in prison, Mr Sakit Zahidov, Mr Ganimat Zahidov and Mr Eynulla Fatullayev, be immediately released.

131. We very much welcome the release of two of the above-mentioned prisoners, Mr Sahavat Gumbatov and Mr Ramin Tagiyev (Vice-Chairman of the *Yeni Fakir* Youth Movement) by court decision in February 2008, and urge that those remaining will also be released, in particular the three journalists and the prisoners mentioned in Resolution 1545 (2007). In this respect, the conviction of Mr Ganimat Zahidov to a four-year term of imprisonment for hooliganism on 7 March 2008, is regrettably a negative development.

132. In February, we were able to visit most of the prisoners we had requested to meet, with the exception of Mr Sakit Zahidov (Mirza Sakit), who was suffering from serious heart problems at the time of our visit and was just about to be transferred to a penitentiary hospital, and Mr Ganimat Zahidov, who was held in a pre-

trial detention centre. During our May visit, we visited the three imprisoned journalists, Mr Eynulla Fatullayev and the two Zahidov brothers, as well as the former Minister of Economic Development, Mr Farhad Aliyev.

133. We thank the authorities and especially the Chairman of the Azerbaijani delegation to the Assembly, Mr Seyidov, and the Minister of Justice, Mr Fikrat Mammadov, for organising these meetings. A summary of the cases and of our discussions with the prisoners during both our February and May visits appears in Appendix II.

v. *Prison reform, detention conditions and allegations of ill-treatment*

134. The Minister of Justice issued an order in April 2006 setting out regulations on public participation in and supervision over the prison system and establishing a Public Committee to secure their implementation. Access to prisons has been granted to the Ombudsperson, local and international non-governmental organisations and human rights defenders. The situation is now well monitored. Further steps to improve the prison conditions have to be taken<sup>20</sup>.

135. The construction of several new prisons is underway or planned and should, on the long term, improve the situation in the prisons of Azerbaijan.

136. Today, prison conditions in Azerbaijan remain harsh despite continuing infrastructure improvements. The situation in the Gobustan prison still gives rise to particular concerns in view of the number of deaths and suicides committed by inmates. Specific complaints against the inhuman regime set up by the new Chief of Prison, Kazim Abdullaev, have been received from several prisoners, including allegations of physical and psychological torture.

137. We would like to draw particular attention to penitentiary centre no 13, where we visited Mr Insanov. The detention conditions are particularly harsh. There is no heating as the gas pipeline does not reach the settlement. Whereas penitentiary centre no 12, which we also visited, is heated and is located only few meters away from centre no 13. We expect that the authorities will provide penitentiary centre no 13 with access to gas and thus install a functioning heating system for the establishment.

138. Incidentally, during our visit in May 2008, we were informed that, because of regulations imposed by the prison administration, inmates of penitentiary centre no 14 willing to use the prayer's room had to provide certificates of their faith from the relevant religious authority. We forwarded this complaint to the Minister of Justice who confirmed that these regulations were in violation of the prison regime and promised to investigate the case and ensure that freedom of religion is guaranteed in all prisons.

139. Regrettably, the only report of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which has been published concerning Azerbaijan to date is that on the first periodic visit in 2002. The last CPT visit to Azerbaijan took place in November 2006. The report on that visit, which was sent to the authorities in July 2007, has not yet been made public. The authorities' response was sent to the CPT in February 2008. We were informed that the Azerbaijani authorities were currently providing for the translation of the CPT reports in order to make them public and available to the Azerbaijani population, including prisoners. We welcome this initiative and see no reason to further postpone publication of the CPT reports on Azerbaijan, in line with the standard practice of member states. We further encourage the reports on the two ad hoc visits of January 2004 and May 2005 to be made public.

140. We have received numerous reports of cases of ill-treatment and allegations of torture carried out by law-enforcement officials during police custody or pre-trial investigations, as well as in the army, for the purpose of extracting confessions or obtaining incriminating statements by witnesses. Investigations into such behaviour have rarely led to prosecution of officers who have committed abuses.

141. On 11 January 2007, the ECHR passed a judgment in the case *Mammadov (Jalaloglu) v. Azerbaijan* finding a violation of ECHR Articles 3 (prohibition of torture) and 13 (right to an effective remedy). The execution of this judgment is pending.

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<sup>20</sup> See also the report of the Council of Europe Human Rights Commissioner on his visit to Azerbaijan, 3-7 September 2007, CommDH(2008)2.

142. Another problem is the lengthy pre-trial detention of up to 18 months. The Prosecutor General regularly extends the initial three-month pre-trial detention period in successive detention periods of several months until the end of the investigation, leading to the *de facto* denial of the right to an effective appeal procedure and inappropriately prolonging the pre-trial. Some detainees are denied access to a lawyer or the right to visits by their families during this period.

143. Moreover, the law allows police to detain and question individuals for 24 hours without a warrant. Many individuals have reportedly been detained by the police for several days, sometimes weeks, without a warrant. In other instances, the Prosecutor General issued *ex post facto* warrants.

144. According to reports we received, judges repeatedly sentence detainees to imprisonment within hours of their arrest without providing access to a lawyer. In many cases, for example in the cases of alleged political prisoners mentioned above, the authorities often restrict family member visits and withhold information about detainees.

145. We received reports from NGOs and lawyers of several accused persons complaining that some of the detainees did not have access to appropriate medical care (see also above section on alleged political prisoners).

146. In this regard, one should add that the Ombudsperson pays particular attention to the situation in prisons, seeking investigation on reported cases of torture or ill-treatment and regularly visiting prisoners.

*vi. Alternative service and conscientious objectors*

147. The establishment of an alternative civilian service is one of the obligations undertaken by Azerbaijan when it joined the Council of Europe in 2001. Azerbaijan undertook to create a legal framework for alternative civilian service by January 2004, yet to date no such law has been adopted.

148. Through a constitutional amendment introduced in August 2002 the Azerbaijani Constitution provides for the option of alternative civilian service (Article 76) for all those whose convictions do not permit them to undertake military service. However, the Azerbaijani courts still rule in favour of the military authorities in cases of conscientious objection.

149. On 4 October 2007, a court sentenced Samir Huseynov, a Jehovah's Witness and conscientious objector, to 10 months' imprisonment for refusing to fulfil his mandatory military service.

150. We were informed that the National Action Plan for the protection of human rights envisages the preparation of a draft law on alternative service by a Task Force, including Council of Europe experts, in 2007-2008. This Task Force has yet to be set up.

*vii. Minorities rights*

151. Upon its accession to the Council of Europe, Azerbaijan committed itself "to adopt, within three years of its accession, a law on minorities which completes the provisions on non-discrimination contained in the constitution and the penal code and replaces the presidential decree on national minorities" (Opinion 222, paragraph 14, iv.g.).

152. In its Resolution 1545 (2007), paragraph 8.16, "the Assembly urges the authorities to implement the recommendations made by the Advisory Committee and in particular to adopt a law on national minorities in line with their accession commitment; it also urges them to ratify the European Charter for Regional or Minority Languages (ETS No. 148) as soon as possible, noting Azerbaijan's commitment to do so within one year of its accession to the Council of Europe".

153. Azerbaijan is home to many national minorities living peacefully together for centuries. The Advisory Committee of the Framework Convention for the Protection of National Minorities welcomed overall the fact that the importance of the protection and promotion of cultures of national minorities is recognised in Azerbaijan.

154. However, religious minorities report regularly threats, fines, sporadic incidents of discrimination, restrictions on the ability to teach in their native languages and harassment by local authorities. These groups included Talysh in the south, Caucasian Lezghins in the north, displaced Meskhetian Turks, and displaced Kurds from the Lachin region.

155. Novruzali Mammadov, a prominent member of the Talysh ethnic minority and Talysh Sedo newspaper Editor-in-Chief, was arrested on 3 February 2007. According to his lawyer, Mr Mammadov was beaten while in custody. After a short release on 4 February, Mr Mammadov was rearrested the day after and sentenced to 15 days' administrative detention for resisting arrest. Mr Mammadov's lawyer reported that Mr Mammadov was detained at the Ministry of National Security rather than in a standard Ministry of Internal Affairs detention facility. Mr Mammadov was subsequently charged with "high treason", remained in pre-trial detention while the government investigated charges and then released 7 months later. Talysh Sedo was reported to be the country's only newspaper published in the Talysh language. Domestic Talysh organisations considered Mammadov's case an act of discrimination.

156. Mr Mammadov's trial before the Baku Court of Grave Crimes, which was closed to the public, began in December 2007.

## **VI. The Nagorno-Karabakh conflict**

157. On 29 November 2007, prior to the opening of the OSCE Ministerial Council in Madrid, the co-chair countries of the Minsk Group strongly urged both parties to endorse a set of proposed Basic Principles for the Peaceful Settlement of the Nagorno-Karabakh Conflict and to start, as soon as possible, to draft a comprehensive Peace Agreement. Representatives of the co-chair countries noted that the two sides had significantly narrowed their differences and that only a few points remained to be settled. They estimated that the joint proposal that was transmitted to the parties "offered just and constructive solutions to these last remaining differences". This document is considered to be a significant step forward, as this is no longer a non-paper but an official proposal deposited with the Chairman-in-office of the OSCE which would serve as a basis for the future negotiations.

158. On 14 March 2008, the United Nations General Assembly adopted a resolution on the situation in the occupied territories of Azerbaijan<sup>21</sup>. The resolution reads that the General Assembly expresses serious concern that the armed conflict in and around the Nagorno-Karabakh region of Azerbaijan continues to endanger international peace and security, reaffirms Azerbaijan's territorial integrity, expresses support for its internationally recognised borders and demands the immediate withdrawal of Armenian forces from occupied territories.

159. 4,604 Azerbaijanis are missing from the conflict over Nagorno-Karabakh. This is a human rights and a humanitarian issue, involving the right of the families to know the fate of their loved ones. The issue continues to poison relations between the two sides, notwithstanding the fact that it should be treated as a humanitarian and not a political issue. The steps which the parties are expected to take to solve this problem are highlighted in Assembly Resolution 1553 (2007) on Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions.

160. The President of Azerbaijan and government officials make regular comment on the Nagorno-Karabakh conflict, reiterating that the region will never be independent and underlining the great military potential of the country. In a statement to the press in April last, President Aliyev announced the increase by 53% of Azerbaijan's military spending in 2008. He added that, in the context of an overall increase in government spending, defence spending should be increased from \$1.3 billion to \$2 billion in 2008<sup>22</sup>.

161. On 28 April 2008, four Armenian citizens were arrested in the Autonomous Republic of Nakhichevan and accused of being spies while the Armenian authorities claimed that they were ordinary citizens who had lost their way and crossed the border inadvertently.

162. The Azerbaijani and Armenian Foreign Ministers met in Strasbourg on 6 May 2008, on the sidelines of the meeting of the Committee of Ministers. Both Ministers subsequently described their talks as constructive and reaffirmed their countries' commitment to seeking a peaceful solution to the Nagorno-Karabakh conflict. The two foreign ministers also met separately with the French, Russian and US co-chairs of the OSCE Minsk Group.

163. It is worth recalling that our Committee held a hearing on Frozen Conflicts in Berlin on 5-6 November 2008 in the course of which the conflict of Nagorno-Karabakh was also discussed<sup>23</sup>.

<sup>21</sup> The resolution was adopted by thirty nine votes to seven, with a hundred countries abstaining from voting.

<sup>22</sup> In the past 4-5 years the military and defence budget of the country has risen from \$150 million to \$1.3 billion.

<sup>23</sup> See the proceedings of the Hearing on frozen conflicts jointly organised by the Monitoring Committee and the German Institute for International and Security Affairs (SWP) in Berlin on 5 and 6 November 2007, Doc. AS/Mon (2008) 15.

## APPENDIX I

*i. Incidents of physical attacks against journalists since April 2007*

On 20 April 2007, *Gundelik Azerbaijan* newsmagazine reporter Uzeyir Jafarov was attacked by two unidentified assailants near the newsmagazine's office. The attack took place several hours after the newspaper's Editor-in-chief, Eynulla Fatullayev, was convicted of defamation and sentenced to 30 months' imprisonment. Uzeyir Jafarov publicly identified a police officer as one of his assailants, whom he said he recognised from Fatullayev's trial. Mr Jafarov filed a complaint against the Yasamal District Prosecutor's Office and the Yasamal District Police Department.

On 28 September 2007, *Impulse* newspaper reporter Suheyra Gambarova was beaten by Ministry of Justice court bailiffs while investigating reports of a forced eviction. Ms Gambarova was hospitalised and diagnosed with haemorrhaging of the brain, short-term memory loss, and a broken nose. She also reportedly developed spinal injuries and impaired vision as a result of the beating.

On 7 May 2008, a reporter from the opposition daily *Azadlyg*, Agil Khalil, was attacked by an unidentified person attempting to push him on the rails in a metro station of Baku. Later on the same day, two unidentified persons tried to kidnap him near the office of the *Azadliq* newspaper. This was the third time he had been the target of violence since late February. Regrettably, the Head of the Public Prosecutor's Office, Vugar Aliyev, made a statement to the press, taking position on the case and accusing Mr Khalil of "spreading unjustified statements about his being tracked and attacked by unknown people"<sup>24</sup>, therefore interfering with the ongoing investigation. Surprisingly enough, Mr Khalil has been banned to leave the country during the investigation by decision of the Prosecutor General.

*ii. Judicial proceedings against journalists*

In October 2006, the Baku Court of Grave Crimes convicted prominent political satirist Sakit Zahidov (also known as Mirza Sakit) of drug possession and sentenced him to three years in prison. The Court of Appeals and the Supreme Court upheld the sentence. Human rights organisations consider the charges against Mirza Sakit to be politically motivated.

On 9 January 2007, *Nota Bene* newspaper journalist Faramaz Allahverdiyev was convicted on charges of defamation and sentenced to two years' imprisonment, following a lawsuit filed by Minister of Internal Affairs Ramil Usubov. Mr Allahverdiyev reportedly suffers from serious health problems. After undergoing surgery at a government medical facility in December, he was released by the 28 December 2007 presidential pardon.

*Sanat* newspaper journalist Rafiq Tagi and Editor-in-Chief Samir Sadagatoglu were convicted on charges of inciting religious hatred on 4 May 2007. Mr Tagi was sentenced to three years' imprisonment and Mr Sadagatoglu to four. Mr Tagi had written an article, published in November 2006, arguing that Islamic values had prevented the country from integrating into Europe. Mr Tagi and Sadagatoglu were released by 28 December presidential pardon.

On 16 May 2007, Editor Yashar Agazadeh and journalist Mr Rovshan Kebirli of opposition newspaper *Mukhalifet* were sentenced to two and half years' imprisonment for having insulted Mr Jalal Aliyev, Member of Parliament and the uncle of the Azerbaijani President, in a newspaper article. On 29 May, the journalist started a hunger strike in prison to protest against his sentence. Mr Kebirli and Agazadeh were among 119 political prisoners pardoned by presidential decree on 28 December 2007.

On 30 May 2007, opposition newspaper *Baki Habar* went out of business. Its Editor-in-chief maintained that the decision to stop publication was not only due to financial reasons but also stemmed from the authorities' efforts to silence journalists.

The broadcasting of the regional Lankaran TV was suspended following a decision by the National TV and Radio Council on 7 June 2007. The Council blamed Lankaran TV for being partially owned by the Lankaran local authorities which is contrary to the Law on TV and Radio Broadcasting which prohibits the State from financing television channels.

Opposition *Bizim Yol* newspaper correspondent Mushvig Huseynov was arrested in July 2007 on charges of accepting a bribe from a Ministry of Labour and Social Protection employee. He was sentenced on 21 January 2008 to 6 years of imprisonment on the basis of Article 311 (taking a bribe) of the Criminal Code. In

<sup>24</sup> *Authorities ban Agil Khalil's leaving Azerbaijan*, Turan news, Baku, 12.05.08

addition, Mushvig Huseynov has been forbidden from working as a journalist for two additional years after he is released from prison. The exchange was captured on video and broadcast on national television. Mushvig Huseynov's defence attorneys maintained that the incident was a set-up and declared Mr Huseynov innocent. Mr Huseynov reportedly suffers from tuberculosis.

On 30 October 2007, the Baku Court of Grave Crimes sentenced the already-jailed Editor-in-chief of *Realny Azerbaijan* and *Gundelik Azerbaijan*, Eynulla Fatullayev, to eight-and-a-half years' imprisonment on charges of supporting terrorism, inciting ethnic hatred, and tax evasion. Eynulla Fatullayev started *Realny Azerbaijan* in 2005 after having worked at *The Monitor*, which ceased publication following the assassination of its founder and editor, Mr Elmar Huseynov. The publication was suspended in May 2007, when the Ministry of Emergency Situations' officials closed the news magazine's offices, on the grounds of a violation of fire prevention regulations.

*Azadliq* newspaper Editor-in-chief Ganimat Zahidov was arrested on 11 November 2007 on charges of hooliganism and inflicting minor bodily harm. He was sentenced to a four-year term of imprisonment for hooliganism.



## APPENDIX II

*Particular cases of prisoners*

**Mr Rasim Alekperov** was arrested in 2000 and sentenced to a fifteen-year term of imprisonment on grounds of alleged coup d'état (with Mr Efendiyev and others). He denies any link with Mr Efendiyev and claims he had not been given a fair trial.

Mr Alekperov suffers from serious nervous and heart problems. He cannot walk alone (or even dress himself) and he is constantly given help by other prisoners and the prison staff. He had been wounded three times (in 1991, 1992 and 1993) and this continues to make him suffer and restrict his movements.

We strongly believe that Mr Alekperov should be released on humanitarian grounds as provided in Article 78 of the Azeri Criminal Code, or should, at the very most, be subject to alternative measures rather than imprisonment.

**Mr Natiq Efendiyev**, who had been considered as a political prisoner by the independent experts of the Secretary General, was released subsequently by a presidential pardon decree in March 2005 and re-arrested a few weeks prior to the parliamentary elections, on 15 October 2005. He was first charged with attempted coup d'état with Razul Guliyev but this charge was dropped on 7 September 2006. He was finally sentenced to a five-year term of imprisonment for illegal possession of weapons.

We received submissions giving rise to serious doubts regarding the evidence on which his conviction was based.

We cannot accept the argument from the authorities claiming that it would not be possible for him to apply for pardon as he had already been pardoned once. We were informed by human rights NGOs that successive pardons had indeed already occurred in the past.

**Mr Ruslan Bashirli** was already visited by the co-rapporteurs during their last visit in 2006. He is the Chairman of the *Yeni Fikir* Youth Movement. Mr Ruslan Bashirli was arrested (together with Mr Ramin Tagiyev, Vice-Chairman) on charges under Article 278 of the Criminal Code of "plotting to overthrow the Azerbaijani leadership at the instigation of Armenian intelligence agents", with whom he allegedly met in Tbilisi on 28 and 29 July 2005. On 12 July 2006, Mr Bashirli was sentenced to a seven-year term of imprisonment.

Mr Bashirli has complained of ill-treatment, as well as of a number of procedural violations before the trial courts. In comparison to his terrible state at the time of the previous visit by the rapporteurs, Mr Bashirli seemed to have partially recovered from the severe ill-treatment he had suffered upon his arrival in prison. He is regularly under pressure from the prison administration and considers he is treated as strictly as long term sentenced prisoners or recidivists. He is regularly accused of violating the prison regime and sent to isolation cells, where he said he is beaten by prison staff. This time, he also complained about a new form of harassment coming from inmates themselves and he was wondering what the role of the penitentiary administration was in this new development.

We are puzzled by the number of procedural violations reported to us prior to and during his trials in court.

**Mr Akif Huseynov** was on the list of prisoners given to the authorities by the co-rapporteurs during their November 2006 visit with a request that their release be considered on humanitarian grounds (see Doc. 11226). He was convicted on 17 January 2000 for high treason and espionage activities against the national security of the Republic of Azerbaijan (criminal relationships with the Iranian intelligence service *Ettelaat*) and convicted to eleven years imprisonment. Mr Huseynov contests the facts he is accused of and considers he was not given a fair trial. He now suffers from diabetes and has to provide himself with the appropriate treatment.

The fact is that Mr Huseynov is eligible for conditional release (under article 76 of Criminal Code) after serving more than two thirds of his sentence. Moreover, his illness also entitles him to be released from prison under Article 78 of the Criminal Code. We see no reason why these provisions are not applied to Mr Huseynov's case.

**Mr Sahavat Gumbatov** was also on the list of the prisoners given to the authorities by the co-rapporteurs during their November 2006 visit with a request that their release be considered on humanitarian grounds (see Doc. 11226). He was accused of participation in the murder of former Vice-Speaker of the Supreme

Council in 1994 and sentenced to a fifteen-year term of imprisonment. He has served 13 years. Mr Gumbatov is very ill and has undergone a critical surgery from which it is difficult to recover in prison.

We are thus pleased to note that on 27 February 2008, the Nisami District Court ordered the conditional release of Mr Gumbatov.

**Mr Ali Insanov**, former Minister of Health from 1993 to 2005, was arrested among several senior government officials in the run-up to the 2005 parliamentary election and was sentenced to eleven years' imprisonment, found guilty of embezzlement of government funds, abuse of office and of receiving bribes. Ten other officials received prison terms ranging from three to nine years.

The prison conditions of Mr Insanov are unacceptable. The prison does not have minimal living conditions: there is no heating system although the temperature can drop below zero degrees in the barracks, no running water and no light. He lives in a prison barrack intended for 128 persons.

**Mr Mushfiq Madatov** is the former Head of the Nasimi District Police Station and was convicted three times on different charges (abuse of power, taking bribes and illegal possession of arms). He is currently serving a seven-year sentence. He said he was convicted three times in absentia and that no witness could testify against him during his trials. He believes he was charged because he used to work with Razoul Guliyev, before the alleged coup d'état. Shortly before the end of his sentence, he was accused of rape which allegedly took place within the prison (of a person visiting the prison). The case is very unclear to us. Even the authorities admitted discrepancies in the case and informed us that the alleged victim changed her testimony at the trial and denied the accusation of rape. Mr Madatov does not seem to know the reason why he remains in prison.

Moreover, Mr Madatov applied for conditional release after serving two thirds of his sentence (as provided in Article 76 of the Criminal Code) but this was refused.

He complained about ill-treatment during his imprisonment and showed us signs of torture and especially his injured ankle which had not been healed properly.

**Mr Eynulla Fatullayev**, Editor-in-chief of two independent newspapers, *Realni Azerbaijan* (a Russian language weekly) and *Gundelik Azarbaycan* (an Azeri language daily), was charged with incitement to ethnic and religious hatred and terrorist offences on 3 July 2007 and sentenced to eight and a half years' imprisonment. These new charges, brought against Mr Fatullayev by the Ministry of National Security (MNB), relate to a commentary published in *Realni Azerbaijan*. The newspaper article focused on Azerbaijan's relations with Iran and contained criticism of the Azerbaijani government.

The Assembly already raised concern about Mr Fatullayev's case in Resolution 1545 (2007). This prosecution is the latest in a catalogue of charges brought against Mr Fatullayev during the past years. In September 2006, Mr Fatullayev received a two-year suspended sentence and was ordered to pay damages in a criminal defamation case brought by Interior Minister Ramil Usubov. Death threats were received by Mr Fatullayev in early March 2007.

Since Mr Fatullayev's imprisonment, serious concerns have been raised about the conditions of his detention. On 29 May 2007, Mr Fatullayev was transferred to the National Security Ministry Detention Centre, where he says that he has been deprived of food and water and forced to sleep on a metal bed with no mattress. Since January 2008, he is detained in penitentiary centre No.12.

He told us that he had applied for pardon before the December 2007 Presidential decree but he had been refused.

At the end of March 2008, Mr Fatullayev started a hunger strike with a view to obtaining his own release as well as the release of all alleged political prisoners. Several opposition journalists and human rights activists, as well as other detainees, joined the hunger strike.

On 6 April 2008, the Yasamal Court fined Mr Fatullayev AZN 10 000, following a claim filed by Tatyana Chaladze, investigator of the Khojaly tragedy. Moreover, according to the court decision, Mr Fatullayev has to refute his articles and thoughts and apologize to Khojaly residents.

Between 10 and 20 April 2008, he was jailed in a punishment cell.

**Mr Sakit Zahidov (Mirza Sakit)** is a well-known poet and opposition satirical journalist who was arrested on 23 June 2006. He was sentenced on 4 October to a three-year prison sentence for illegal possession and use of drugs. Ten grams of heroin were found in his pocket while he was being searched in the police station.

He has always maintained since his arrest that the illegal substance was planted on him and that he neither uses nor deals in drugs. Police admitted in court that a urine drug test performed on the same day of his arrest was clean. No blood drug test was performed. According to doctors called to testify in court, statements they wrote in medical documents calling Mirza Sakit a drug addict were based on merely visual assessments.

When we visited him in May 2008, Mirza Sakit complained that, even though he had requested to be transferred to penitentiary medical service for his heart condition, he was systematically sent back to his cell without proper diagnosis or treatment, on the ground that the doctor had not identified any serious problems. He believed that unofficial instructions had been given to prevent him from receiving proper treatment.

**Mr Ganimat Zahidov** (brother of Sakit Zahidov) is editor of the leading independent newspaper *Azadlyg*. He was arrested in November 2007, charged with "hooliganism" and remanded in custody for two months pending his trial. We were not allowed to meet him since, during our visit, the investigation of his case was still on-going. On 7 March 2008, the Yasamal district court sentenced Mr Ganimat Zahidov to a four-year term of imprisonment.

On 13 May 2008, The Baku Appellate Court rejected Mr Zahidov's appeal and decided to uphold the decision of the Yasamal district court.

**Mr Farhad Aliyev**<sup>25</sup>, former Minister of Economic Development and a prominent businessman, was arrested on 19 October 2005 on charges of attempting to organise a violent coup d'Etat; organisation of massive unrest; corruption; economic mismanagement; embezzling state property. Upon his arrest and until today, Mr Farhad Aliyev has been detained in the Ministry of National Security.

Charges of attempt coup d'Etat against Farhad Aliyev have been dropped during the investigation and on 31 October 2007, after a five-and-a-half-month trial, the Court sentenced him to a ten-year sentence on charges of corruption, abuse of power and other "economic crimes", along with the confiscation of his property. There is no legal ground explaining why Mr Farhad Aliyev, charged with economic crimes, is kept in the Ministry of National Security pending his appeal.

After several requests from the previous co-rapporteurs, we were finally allowed to visit him in prison on 18 May 2008.

We pay particular attention to his case for the following technical grounds: his health condition and his need for appropriate treatment; the several violations of his right to a fair trial assessed by domestic and international observers and adequate judicial control of prolonged pre-trial detention in accordance with domestic legislation provisions and the European Convention of Human Rights which is directly applicable in the Azerbaijani legal system. In its Resolution 1545 (2007), the Parliamentary Assembly recommended that the Azerbaijan Government conduct the trial of Farhad Aliyev in an independent, fair and impartial manner.

As confirmed by the Head of Cardiology at the Ministry of Health, Mr Farhad Aliyev suffers from stenocardia (a form of angina) and a poor blood supply (ischemia), and he is alleged to have suffered a number of hypertensive strokes since his arrest and detention in the investigation-isolation unit of the Ministry of National Security. When meeting with us, Mr Farhad Aliyev claimed that his treatment was inadequate and that his health had seriously deteriorated and required further treatment. This was again denied by the prison administration. We forwarded this information to the President of Azerbaijan and the Vice-Minister of Justice.

As regards the procedural aspects of the case, a number of other procedural violations of both the domestic legislation and the ECHR (related to the arrest, first appearance before a judge, access to and contacts with a lawyer, judicial control of detention on remand, conduct of investigation etc.) have been reported to us by Mr Farhad Aliyev's lawyers and himself. They have been refuted by the Prosecutor General. Mr Farhad Aliyev also claimed that he had not been allowed to meet or talk to his relatives by telephone for more than two years.

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<sup>25</sup> See doc.11226 on the honouring of obligations and commitments by Azerbaijan, adopted on 16 April 2007, for detailed presentation of his case, paragraphs 136 to 147.

*Doc. 11627*

An application lodged with the European Court of Human Rights by Mr Farhad Aliyev was registered on 13 October 2006.

*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)

*Draft resolution* unanimously adopted by the committee on 27 May 2008

*Members of the committee:* Mr Serhiy **Holovaty** (Chairperson), Mr György Frunda (1<sup>st</sup> Vice-Chairperson), Mr Konstantin **Kosachev** (2<sup>nd</sup> Vice-Chairperson), Mr Leonid **Slutsky** (3<sup>rd</sup> Vice-Chairperson), Mr Aydin Abbasov, Mr Avet **Adonts**, Mr Pedro Agramunt, Mr Miloš **Aligrudić**, Mrs Meritxell Batet Lamaña, Mr Ryszard Bender, Mr József **Berényi**, Mr Aleksandër **Biberaj**, Mr Luc Van den Brande, Mr Jean-Guy **Branger**, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise **Christoffersen**, Mr Boriss Cilevičs, Mr Georges **Colombier**, Mr Telmo Correia, Mr Valeriu Cosarciuc, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette Durrieu, Mr Mátyás Eörsi, Mrs Mirjana Ferić-Vac, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Andreas **Gross**, Mr Michael **Hagberg**, Mr Holger Haibach, Ms Gultakin **Hajiyeva**, Mr Michael Hancock, Mr Davit **Harutyunyan**, Mr Andres **Herkel**, Mr Raffi Hovannisian, Mr Kastriot Islami, Mr Miloš Jevtić, Mrs Evguenia Jivkova, Mr Hakki **Keskin**, Mr Ali Rashid Khalil, Mr Andros Kyprianou, Mr Jaakko **Laakso**, Mrs Sabine **Leutheusser-Schnarrenberger**, Mr Göran **Lindblad**, Mr René van der Linden, Mr Eduard **Lintner**, Mr Younal Loutfi, Mr Pietro Marcenaro, Mr Mikhail Margelov, Mr Bernard **Marquet**, Mr Dick **Marty**, Mr Miloš **Melčák**, Mrs Assunta Meloni, Mrs Nursuna **Memecan**, Mr João Bosco Mota Amaral, Mr Theodoros Pangalos, Ms Maria Postoico, Mr Christos Pourgourides, Mr John Prescott, Mr Andrea **Rigoni**, Mr Dario Rivolta, Mr Armen Rustamyan, Mr Indrek Saar, Mr Oliver Sambevski, Mr Kimmo **Sasi**, Mr Andreas Schieder, Mr Samad **Seyidov**, Mrs Aldona Staponkienė, Mr Christoph Strässer, Mrs Elene **Tevdoradze**, Mr Mihai Tudose, Mr Egidijus Vareikis, Mr Miltiadis **Varvitsiotis**, Mr José Vera Jardim, Mrs Birutė **Vésaitė**, Mr Piotr **Wach**, Mr Robert Walter, Mr David Wilshire, Mrs Renate Wohlwend, Mrs Karin S. **Woldseth**, Mr Boris Zala, Mr Andrej Zernovski.

N.B.: The names of the members who took part in the meeting are printed in **bold**

*Secretariat of the committee:* Mrs Chatzivassiliou, Mr Klein, Ms Trévisan, Mr Karpenko