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The functioning of democratic institutions in Azerbaijan

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Rapporteur: Mr Andres HERKEL, Estonia, Group of the European People's Party

Summary

Several months ahead of the 10th anniversary of the country's membership of the Council of Europe, the Monitoring Committee considers that the democratic credibility of Azerbaijan is again at stake at its November 2010 parliamentary elections. It considers that these elections are particularly important in a country in which it is still necessary to reinforce the application in practice of the constitutionally guaranteed principle of the separation of powers and, especially, to strengthen the parliament's role vis-à-vis the executive.

Therefore, the committee calls on the authorities to ensure the necessary conditions for the full compliance of the November parliamentary elections with European standards and to pass on a clear message at the highest political level, that electoral fraud will not be tolerated. It also urges all political parties to take part in the forthcoming elections.

Furthermore, as regards the situation of media and journalists, the committee condemns the arrests, intimidation and harassment of journalists, it calls for decriminalisation of defamation and for the release of Eynulla Fatullayev immediately as ordered by the European Court of Human Rights.

1. Reference to committee: Resolution 1115 (1997)

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A. Draft resolution[2]

1. When joining the Council of Europe in January 2001, Azerbaijan opted for European standards with respect to democracy, rule of law and human rights. The Parliamentary Assembly has been following closely the developments in the country. As a result of intensive cooperation between the Assembly and the Azerbaijani delegation, six reports have been adopted by the Assembly since the country's accession, two on the monitoring procedure and four on the functioning of democratic institutions in the country. The Assembly firmly believes that the Council of Europe has a crucial role to play in assisting the country in its efforts to bring about democratisation.

2. In November 2010, Azerbaijan will be holding its second parliamentary elections since the country's accession to the Council of Europe. The Assembly attaches great importance to the establishment of the conditions which would enable these elections to comply fully with European standards and be considered as free and fair.

3. Referring to the report of the Ad hoc Committee on the observation of the 2008 presidential election and to the report of the Congress of Local and Regional Authorities on the 2009 Municipal elections, the Assembly notes that considerable progress has been made, particularly during the last presidential election in 2008, in meeting European standards. It regrets, however, that none of these elections has fully complied with democratic requirements.

4. Since the country's accession to the Council of Europe, the parliament of Azerbaijan has reinforced its position vis-à-vis other state institutions. However, much remains to be done to further strengthen parliamentary control over the executive and improve checks and balances in a state with a strong presidential system. The forthcoming parliamentary elections are particularly important in a country in which it is still necessary to reinforce the application in practice of the constitutionally guaranteed principle of the separation of powers and, especially, to strengthen the parliament's role vis-à-vis the executive.

5. Several months ahead of the tenth anniversary of Azerbaijan's membership in the Council of Europe, the Assembly considers that the democratic credibility of the country is again at stake. Despite progress being made during the 2008 presidential election, some systemic shortcomings, including the lack of competitiveness and genuine political pluralism, need to be redressed.

6. Even when the European Commission for Democracy through Law (Venice Commission) in its Opinion concluded that improvement was made because several amendments were adopted, the Electoral Code remains complex, especially with regard to 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. The Assembly also agree with the Venice Commission that the composition of the Central Electoral Commission and territorial commissions, as well as the complaints and appeals procedure still need to be addressed.

7. The Assembly recalls the recent judgment of the European Court of Human Rights in the case of *Namat Aliyev v. Azerbaijan*, concluding that the actions of the electoral commissions and courts concerned, had resulted in the violation of the applicant's right to stand freely and effectively for election in his constituency.

8. The period since the previous parliamentary elections has been marked by a further weakening of the opposition both within and outside the parliament. This has resulted in the scarcity of opposition candidates which is damaging the democratic process of the country.

9. The Assembly takes note of the 2009 Constitutional amendments, and whilst welcoming some positive innovations, at the same time regrets that there was no prior request to the Venice Commission on the proposed constitutional amendments, some of which are of crucial importance for the functioning of the country's democratic institutions and especially, for the electoral process.

10. Furthermore, as regards the general environment needed to allow the democratic electoral process to develop, the Assembly is concerned about the reported violations of basic freedoms such as the freedom of assembly and the media. It recalls, in this context, the European Parliament resolution on freedom of expression in Azerbaijan of 17 December 2009, voicing concern about the deterioration of media freedom in the country.

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2. Draft resolution adopted by the committee on 19 May 2010.

11. The Assembly welcomes the Action plan to support the 2010 parliamentary elections in Azerbaijan adopted by the Ministers' Deputies on 10 March 2010 which focuses on a number of issues identified in co-operation with the Azerbaijani authorities and in liaison with other international institutions such as electoral legislation, training of election administration staff, media coverage of the campaign, raising voter awareness of electoral issues, and the organisation of public debates.

12. In the light of these considerations, the Assembly calls on the Azerbaijani authorities to ensure the necessary conditions for the full compliance of the forthcoming elections with the European standards, and in particular to:

12.1. co-operate with the Venice Commission with a view to revising the Electoral Code on the outstanding issues, namely the composition of the Central Electoral Commission and territorial electoral commissions, candidate registration, observers, the electoral roll and its accuracy, as well as the complaints and appeals procedures;

12.2. establish a free and fair candidate registration process and effective appeals procedures;

12.3. generate conditions for a fair electoral campaign, in particular through full implementation in practice of the law on the freedom of assembly and by ensuring the freedom of media;

12.4. enable candidates and activists representing opposition effectively to conduct their campaigns, be it in street rallies or through the media, in particular television;

12.5. refrain from any kind of discrimination with regards to candidates and activists on the basis of their political convictions and activity;

12.6. take the necessary measures to train members of election commissions in vote counting procedures;

12.7. resume without delay a dialogue between the ruling majority and the opposition both within and outside the parliament so as to improve the political climate and build the trust of the population in the electoral process.

13. As regards the situation of the media and journalists, the Assembly condemns the arrests, intimidation, harassment, and physical threats of journalists as borne out by the Judgment of the European Court of Human Rights in the case *Fatullayev vs. Azerbaijan.* In this context, the Assembly also expresses concern about the fate of two youth activists, Emin Milli and Adnan Hajizade, who were sentenced to two years six months and two years prison respectively.

14. The Assembly also deplores the death of Novruzali Mammadov, a researcher and editor-in-chief of the only Talysh-language newspaper, Tolyshi Sado, who died in prison in August 2009 and whose name was on the list of political prisoners drawn up by the Azerbaijan Federation of Human Rights Organisations.

15. The Assembly welcomes the release of several imprisoned journalists, together with 99 other prisoners following the presidential pardon of 25 December 2009, in particular the well-known journalist and poet Mirza Zakit, Ganimat Zahidov, the editor of Azadliq, one of the main independent newspapers, Ali Hasanov, editor-in-chief of the Ideal newspaper, and Mr Mushvig Huseynov, a correspondent of the Bizim Yol newspaper. At the same time, it regrets that some journalists remain imprisoned.

16. The Assembly is also concerned by the often disproportionate character of criminal sanctions imposed on some journalists in defamation cases and reiterates its position that defamation should be decriminalised.

17. In the light of the above considerations, the Assembly calls on the Azerbaijani authorities to:

17.1. release Eynulla Fatullayev as ordered by the European Court of Human Rights notwithstanding the appeal by the Azerbaijani authorities to the Grand Chamber of the Court, procedure which is pending;

17.2. introduce amendments to the Criminal Code so as to decriminalise defamation, in line with the trend that can be seen at the international level and with the case law of the European Court of Human Rights and, in the meantime, refrain from bringing any new criminal prosecutions against journalists for defamation;

17.3. create the conditions for journalists to conduct their professional work without interference by the authorities.

18. Furthermore, the Assembly believes that further reforms of key state institutions are indispensable in order to ensure their functioning in full compliance with democratic standards in the electoral process. It expects Azerbaijan to comply fully with the Council of Europe standards for democratic elections in the forthcoming 2010 parliamentary elections, and expects to receive an invitation in good time to observe them.

19. In this context, it calls on the Azerbaijani authorities to pass on a clear message, at the highest political level, that electoral fraud will not be tolerated.

20. At the same time, the Assembly urges all political parties to take part in the forthcoming elections.

21. Moreover, the Assembly notes that the overall progress achieved by Azerbaijan in honouring its obligations and commitments undertaken by the country while acceding to the Council in Europe in 2001 will be presented to it in a specific report by the Monitoring Committee in 2011.

22. In the meantime, it encourages the Azerbaijani authorities to foster the reforms under way in areas ranging from the rule of law to the separation of powers ; it also calls on the Azerbaijani authorities to continue enlisting the expertise of the competent Council of Europe bodies before adopting crucial reforms for the functioning of the country's democratic institutions and, against the backdrop of the forthcoming parliamentary elections, not to confine themselves to complying with the letter of the law but to focus on its application in practice.

B. Explanatory memorandum by Mr Herkel and Mr Debono Grech, co-rapporteurs

1. Introduction

1. Opinion 222 (2000) on Azerbaijan's application for membership of the Council of Europe sets out the obligations that Article 3 of the Organisation's Statute requires all member states to meet, as well as a number of specific commitments that Azerbaijan agreed to fulfil when it joined the Council of Europe on 25 January 2001.

2. Pursuant to Resolution 1115 (1997) and in accordance with paragraph 17 of Opinion 222, the monitoring procedure was commenced immediately after Azerbaijan's accession.[3] The Monitoring Committee has since then presented to the Parliamentary Assembly several reports on Azerbaijan's progress on meeting its obligations and commitments, and especially on the functioning of its democratic institutions. These reports resulted in the Assembly's adoption of Resolutions 1305 (2002), 1358 (2004), 1398 (2004), 1456 (2005), 1480 (2006), 1505 (2006), 1545 (2007) and 1614 (2008).

3. The Committee on Legal Affairs and Human Rights has also submitted to the Assembly several reports on the observance of a specific commitment, such as the obligation to re-try or release individuals considered as political prisoners.[4] Developments in the Nagorno-Karabakh conflict have been monitored by the Political Affairs Committee[5] and the Ad hoc Committee of the Bureau. The situation of the refugees and displaced persons in Armenia, Azerbaijan and Georgia is described in Doc. 10835, which led to the Assembly's adoption of Resolution 1497 (2006). The issue of displaced persons from Azerbaijan is also dealt with in Assembly reports of a more general nature, especially Doc. 11942 and its Recommendation 1877 (2009)[6] and Doc. 12105 and its Resolution 1708 (2010).[7] The situation of women in the South Caucasus, including Azerbaijan, is described in Doc. 11178, which was discussed at the meeting of the Standing Committee in March 2007 and led to the adoption of Resolution 1544 (2007) and Recommendation 1790 (2007).

4. Moreover, 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 called on the Azerbaijani authorities to take a number of measures "to find a speedy and permanent solution to the issue of political prisoners and presumed political prisoners". In response to the motion for a resolution on the follow-up to the issue of political prisoners in Azerbaijan[8] which was tabled in December 2007, and regretting the lack of concrete follow-up given to the Assembly's recommendations and the absence of results in this matter, the Committee on Legal Affairs and Human Rights appointed Mr Strässer (SOC, Germany) rapporteur on this subject.

5. With regard to the monitoring procedure itself, following Mrs Evgenia Jivkova's departure from the Parliamentary Assembly, Mr Joseph Debono Grech was appointed co-rapporteur on the honouring by Azerbaijan of its obligations and commitments on 18 November 2009.

6. It is against this background that the co-rapporteurs on the monitoring procedure for Azerbaijan have travelled to Baku on four occasions: first of all, Mr Herkel and Mrs Jivkova from 4 to 7 February 2008, from 18 to 20 May 2008 and from 7 to 11 April 2009; then Mr Herkel and Mr Debono Grech from 8 to 11 February 2010. The main purpose of these visits was to update our information on the democratic reforms and the progress made on human rights.

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3. Azerbaijan's observance of its obligations and commitments is also monitored by the Council of Europe Committee of Ministers through its Monitoring Group (GT-SUIVI.AGO). The latter presented its last report in February 2010, see Doc. CM(2009)180, declassified at the 1076th meeting of the Ministers' Deputies (3-4 February 2010).
4. See Resolution 1272 (2002), Resolution 1359 (2004), Resolution 1398 (2004) and Resolution 1457 (2005).
5. See Resolution 1416 (2005) and Recommendation 1690 (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, both adopted by the Assembly in January 2005. See also Resolution 1525 (2006) on the establishment of a stability pact for the South Caucasus, adopted by the Standing Committee in November 2006.
6. Report by the Committee on Migration, Refugees and Population, rapporteur: Mr Greenway, on "Europe's forgotten people: protecting the human rights of long-term displaced persons", adopted by the Assembly on 24 June 2009.
7. Report by the Committee on Migration, Refugees and Population, rapporteur: Mrs Mendonça, on "The detention of asylum seekers and irregular migrants in Europe", adopted by the Assembly on 28 January 2010.
8. Motion for a resolution presented by Mr Pourgourides and others on the follow-up to the issue of political prisoners in Azerbaijan, Doc. 11468.

7. We met the highest state representatives (the President, the Speaker of the Parliament, the Minister of Justice, the Deputy Foreign Minister, the Attorney General and the ombudsman) as well as representatives of the NGOs and the media, leaders of the opposition parties, representatives of the international community and diplomats. We also visited several prisoners to whose cases we draw attention in our reports, including Mr Novruzali Mammadov, a 68-year-old researcher and linguist and editor-in-chief of the Talysh-language newspaper, who was then serving a ten-year prison sentence at Penitential Centre No. 15, where he has regrettably since died. In February 2010, we met the two activist bloggers arrested last July, Mr Emin Milli and Mr Adnan Hajizade.

8. We also travelled to the Autonomous Republic of Nakhchivan in 2009, where we met the President of the Supreme Council of the Republic of Nakhchivan, the ombudsman and representatives of the media and NGOs. During our last visit in February 2010, we also went to Ganja, the country's second city, where we met various local players, including the local authorities, the ombudsman, representatives of the opposition parties and human rights defenders. We would like to thank the local authorities of these two regions for their hospitality.

9. We wish to express our gratitude to the Azerbaijani Parliament and, especially, the leader of the Azerbaijani delegation to the Assembly, Mr Samad Seyidov, and his secretariat, for the excellent organisation of our visits, which enabled us to engage in frank and open exchanges of views with the authorities, even at the highest level. Our thanks also go to Mr Aydin Abbasov, a member of the delegation and MP for the Ganja constituency, who welcomed us and accompanied us on our visit to his city. We also thank the Minister of Justice, Mr Fikrat Mammadov, for his help and support in the organisation of the prison visits to see several of the detainees mentioned in Resolution 1545 (2007) or sentenced since the adoption of this resolution.

10. We are also grateful to Mrs Veronika Kotek, Special Representative of the Secretary General of the Council of Europe to Azerbaijan, and her staff in the Baku office for their valuable assistance in the organisation of meetings with representatives of civil society, the political parties, the media and international organisations, as well as in the organisation of press conferences.

11. Although Azerbaijan demonstrated at the last elections that it had made progress with regard to organising the polls themselves, some systematic shortcomings, including the lack of competitiveness and genuine political pluralism which need to be redressed are still persistent. We hope that the questions raised in this report will be dealt with rigorously by the authorities before the parliamentary elections planned for November 2010 so as to ensure that they meet the Council's standards.

12. This report accordingly discusses the key issues, which are the state of progress on democratisation after the October 2008 presidential election and the referendum on constitutional changes held on 18 March 2009, and the situation of human rights and fundamental freedoms, including the media environment.

13. All these questions are very often closely linked. Moreover, the democratisation of a society is a long and complex process.

14. Furthermore, we welcome the overall progress achieved by Azerbaijan in honouring its obligations and commitments undertaken by the country while acceding to the Council in Europe in 2001. We take note of the openness shown by the authorities and their willingness to co-operate in good faith with the monitoring mechanisms of the Council of Europe to create and strengthen the democratic institutions. We encourage them on the reforms under way in areas ranging from the rule of law to the separation of powers.

15. We call on the Azerbaijani authorities to continue enlisting the expertise of the competent Council of Europe bodies before adopting crucial reforms for the functioning of the country's democratic institutions and, against the background of the forthcoming parliamentary elections, not to confine themselves to complying with the letter of the law but focus on its application.

2. Democratisation

16. We believe it is important to place this section in a broad context and point out that Azerbaijan is currently facing major challenges associated with its geopolitical and geostrategic situation. For its part, the Council of Europe has a crucial role to play to help the country in its efforts to bring about democratisation.

17. In 2009, the main concern among most of the people to whom we spoke was the improvement in the relations between Armenia and Turkey, in the absence of a solution to the Nagorno-Karabakh issue. In Azerbaijan, the signing on 10 October 2009 of the protocols between Armenia and Turkey on the establishment of diplomatic relations and the development of bilateral relations is seen as a negative

development and a threat to the region's stability. The reopening of the border, which was closed by Turkey in 1993 out of solidarity with Azerbaijan following the Nagorno-Karabakh conflict between Armenia and Azerbaijan, is perceived as an injustice in this country, which has seen its territorial integrity threatened.

18. All parties in Azerbaijan are disappointed with the negotiations of the Minsk Group aimed at finding a solution to the Nagorno-Karabakh conflict. The failure to resolve this conflict, which affects the country's territorial integrity, is still impeding the democratic reforms undertaken in the country. The continuing occupation of these territories and the presence of hundreds of thousand refugees and IDPs in the country remain a challenge for this country.

19. On 7 November 2010, Azerbaijan will be holding its second parliamentary elections since it joined the Council of Europe in 2001. The country has also held two presidential elections since then. Unfortunately, none of those ballots fully met democratic standards,[9] even though considerable progress was noted, especially during the last presidential election in 2008. We welcome the efforts spared by the Government of Azerbaijan aimed at further democratising the country.

20. Our last fact-finding visit took place nine months before the parliamentary elections planned for 7 November 2010.

21. Most recently, in its judgment of 8 April 2010 in the case of *Namat Aliyev v. Azerbaijan*,[10] the Court concluded that the conduct of the electoral commissions and courts and their respective decisions had revealed a lack of any genuine concern for the protection of the applicant's right to stand for election. The Court noted that what was at stake in the present case was not the applicant's right to win the election in his constituency, but his right to stand freely and effectively for it. The applicant was entitled under Article 3 of Protocol No. 1 to stand for election in fair and democratic conditions, regardless of whether he ultimately won or lost.

2.1. The constitutional reform of 2009

22. During our visits, we regretted that there had been no prior request for the European Commission for Democracy through Law (Venice Commission) to issue an opinion on the proposed constitutional amendments, some of which are very important for the functioning of the country's democratic institutions and, especially, its elections.

23. Following the request made by the Monitoring Committee[11] and the Secretary General of the Council of Europe, the Venice Commission adopted on 14 March 2009, that is to say just a few days before the vote, an opinion on the Referendum Law in which it concluded that "[some] amendments, undoubtedly, constitute important improvements as compared to the existing Constitution and they must be welcome".[12] At the same time, there is cause for concern regarding certain unfavourable developments concerning democratic practices in view of the present situation in Azerbaijan. The Venice Commission states that "[the] draft constitutional amendments contain a range of sectoral changes in the form of 29 questions to which each voter will have to respond by either yes or no. Although one can easily identify the main issues raised by the reform …, a sense of coherence of the reform as a whole seems to be lacking. As a result, it is at times difficult to understand the purpose, necessity and/or interrelations of certain changes. For example, some changes only involve a modest adaptation in terminology … while others significantly affect the overall distribution of powers between the branches of state powers".

24. Some of the constitutional reforms proposed contained innovations that should be welcomed. There appears for instance to be a laudable attempt in last year's reform to guarantee greater transparency in public affairs through the entrenchment of the principle of public access to the sessions of the parliament and the obligation to publish the decisions of the Supreme Court and Constitutional Court and the laws enacted. Furthermore, the amendments proposed to Article 96 of the constitution, which extend the right of legislative initiative to 40 000 citizens are to be welcomed.

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9. See the Assembly reports on the election observation missions in Azerbaijan, Doc. 10003 of 27 November 2003 (2003 presidential election), Doc. 10751 of 29 November 2005 (parliamentary elections in 2005), Doc. 10941 of 13 May 2006 (partial re-run of the 2005 parliamentary elections) and Doc. 11769 (2008 presidential election).
10. Application No. 18705/06.
11. See press release of 29 January 2009, "Parliamentarians want experts' opinion on constitutional changes in Azerbaijan".
12. See Opinion No. 518/2008 on the draft amendments to the constitution of the Republic of Azerbaijan adopted by the Venice Commission at its 78th plenary session (Venice, 13-14 March 2009), CDL-AD(2009)010.

25. The main concerns raised by the reforms relate to the abolition of the two-term limit to the office of President and to the President's position. Under the previous provisions, the President could only be elected for two consecutive terms, and the amendment abolished the limit to the number of terms. In the Venice Commission's opinion "Azerbaijan, the Constitution of which provides for a Presidential system of Government, is undoubtedly a country where the President concentrates extensive powers in his hands, given the few checks and balances which exist. It was therefore logical that the original text of the Constitution of Azerbaijan provided for a two-term limit. … As a rule, it can be said that the abolition of existing limits preventing the unlimited re-election of a President is a step back, in terms of democratic achievements. … Explicit constitutional limitations on the successive terms of a president are particularly important in countries where democratic structures and their cultural presuppositions have not yet been consolidated."

26. Other issues of concern apart from the abolition of the two-term limit to the office of President include the extension of the term of the Milli Mejlis and the President in the case of military operations and changes concerning the local government bodies, in breach of the European Charter of Local Self-Government.[13] Moreover, the Venice Commission believes that with the restrictions on the rights and freedoms guaranteed by the constitution in the current wording of the proposed amendment to Article 32(III), and bearing in mind the general context of media freedom and the activities of journalists in Azerbaijan, "there is a strong risk that this provision be implemented in a way contrary to Article 10 of the European Convention on Human Rights (ECHR)".

27. Nonetheless, on 2 April 2009, just before our visit, President Aliyev signed a decree instructing his administration to draft laws for the implementation of some of the amendments adopted by referendum (these laws relate, for example, to the changes to Articles 17, 25, 32, 48, 71, 72, 84, 96, 101, 125, 129, 131, 146 and 149 of the constitution) and to submit them to the Venice Commission. The Venice Commission pointed out that its opinion on the Referendum Law was based on the text of the constitutional amendments and could not cover laws that would be adopted with respect to the implementation of those amendments. It did, however, point out that some of the concerns it had expressed in its opinion would no longer apply if the relevant laws were adopted.

28. The current presidential administration was confirmed in its mandate by a wide margin in the 18 March 2009 referendum on the amendments and the additions to the constitution. The final results of this referendum, in which 70.83% of the voters took part, were announced by the Central Electoral Commission (CEC) on 30 March. The 41 amendments presented in 29 questions were accepted, with the percentage of "Yes" votes between 87.15% and 91.76%.

29. We welcome the President's decision to submit the draft implementing laws to the Venice Commission for opinion and once again call on the Azerbaijani authorities to ask for the Venice Commission's opinion before adopting any important legislation.[14] To date, the Venice Commission has been asked to issue two opinions since the constitutional reform, which were adopted in December 2008: the "opinion on the draft law on additions to the law on the status of the municipalities of the Republic of Azerbaijan"[15] and the "opinion on the draft law about obtaining information on activities of the courts of Azerbaijan".[16]

30. The authorities have promised to take this step before the parliament passes the law on conflicts of interests, which will be crucially important for the proper functioning of the country's democratic institutions.

2.2. Previous elections since 2008

31. The ad hoc committee of the Parliamentary Assembly, which observed the election process, concluded that the results of the presidential election held on 15 October 2008 in the Republic of Azerbaijan "were the reflection of the will of that country's electorate". The voter turnout was 75.64% and the election was won by Mr Ilham Aliyev, who obtained 88.73% of the votes cast.

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13. See Press Release 161 (2009) of 2 March 2009 published by the Congress, "Congress Bureau calls for postponing referendum in Azerbaijan" and Press Release 218 (2009) of 16 March 2009, "Ian Micallef warns Azerbaijan against weakening its Constitution".
14. See the press releases contained in Appendix.
15. Opinion No. 559/2009, CDL-AD(2009)049 adopted by the Venice Commission at its 81st plenary session (Venice, 11-12 December 2009).
16. Opinion No. 548/2009, CDL-AD(2009)055 adopted by the Venice Commission at its 81st plenary session (Venice, 11-12 December 2009).

32. In general, the election took place in a calm and orderly climate, but on election day in some constituencies some violations were noted during the counting and, in particular, the tabulation of the votes.[17] It is also regrettable that five political parties did not take part in the election. There is still no real competition in the country between the platforms and political ideas.

33. A delegation from the Parliamentary Assembly went to the country to monitor the referendum, published a statement on the day after the ballot[18] in which they concluded that "the result of the referendum shows the willingness of the people of Azerbaijan to have greater stability and elements for further democratisation; a better balance of power will nevertheless require further reforms in the future".

34. Municipal elections held on Wednesday 23 December 2009 were observed by an 11-person delegation of the Congress of Local and Regional Authorities of the Council of Europe ("the Congress) at the invitation of the Azerbaijani authorities. The delegation concluded[19] that the elections were generally well prepared from the technical point of view and that they had passed off in a calm and orderly atmosphere. Although it welcomed the considerable progress made in relation to previous local elections, it did raise three issues of concern:

– the lack of genuine political pluralism among the parties; there were few candidates who represented an opposition; the campaign was not very active (either in the streets or on television);

– the candidate registration process and vote counting procedure (owing to incidents in some polling stations);

– the situation of territorial democracy in Azerbaijan.

35. In its preliminary draft resolution and preliminary draft recommendation approved by the Bureau of the Congress on 5 February 2010,[20] the Congress called on the Parliamentary Assembly to take the above recommendation into account under its procedure for monitoring the honouring of obligations and commitments by Azerbaijan.

36. Apart from the recommendations specific to local self-government, especially the municipality of Baku, the Congress raised some points that we consider vital for the preparation of the forthcoming parliamentary elections:

> *"– the overall political situation in Azerbaijan, as a result of the weakness of the opposition which became evident on election day, led to the scarcity of opposition candidates;*
>
> *- there were few visual signs of a lively election campaign in the media, in particular television, by candidates;*
>
> *- the low-key campaign, in the streets and on TV resulted in a low turnout; the Congress considers this low participation as an alarming signal;*
>
> *- a number of buildings where polling stations were located are not easily accessible to persons with disabilities and elderly people".*

37. On 11 January 2010, the CEC confirmed the results of the municipal elections of 23 December 2009. The results were invalidated in 33 polling stations, representing nine municipalities. Some 18 polling stations and two district electoral commissions were dissolved and two chairs of district commissions were dismissed. Out of 30 963 candidates – including 6 108 women – 15 591 of the 15 682 municipal councillors were elected, including 4 074 women (26.1% of the total number of councillors elected). The ruling Yeni Azerbaijan (YAP) party is now represented by 66.9% of the municipal councillors. Some 18 other political parties won 5.35% of the seats.

38. We appreciate, as a positive step forward, in comparison with previous elections, the substantial increase of woman (26.5%) and youth (27.6%) representation among members of municipalities elected as a result of the 23 December 2009 municipal elections, which is an indication of a more active participation of women and youth in the public-political life of the country.

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17. "Elections in Azerbaijan did not meet international standards despite some improvements", Baku, 7 November 2005, statement by the ODIHR-OSCE/PACE/OSCE PA International Election Observation Mission.
18. "Azerbaijani people vote positively, says PACE delegation present at constitutional referendum", Baku, 19 March 2009.
19. See the report by the Congress, Chamber of Local Authorities, 18th session, CPL(18)2 of 8 February 2010, on the municipal elections in Azerbaijan (23 December 2009), rapporteur: Francis LEC (France, SOC) for adoption by the Congress on 18 March 2010.
20. Ibid.

2.3. Reform of the Electoral Code

39. The Azerbaijani authorities requested the Venice Commission's help in the reform of the country's Electoral Code just before the partial elections of May 2006. The consultations continued until February 2008, after which the Venice Commission adopted a joint opinion with the OSCE/ODIHR on the draft amendment to the Electoral Code of the Republic of Azerbaijan at its 75th plenary session in Venice on 13 and 14 June 2008.[21]

40. Before that, a joint interim opinion with the OSCE/ODIHR on these draft amendments was adopted in advance on 14 and 15 March 2008 to enable Azerbaijan to take account of these recommendations before the amendments were passed by parliament. On 2 May 2008, the President of Azerbaijan presented a draft law on the amendments to the Electoral Code and it was subsequently passed by parliament on 2 June 2008.

41. In its opinion, the Venice Commission held that "the amendments address some recommendations and are a positive development. However, the extent to which any amendments to the law can have a positive impact will ultimately be determined by the level of good faith and political will exhibited by state institutions and authorities responsible for implementing and upholding the law". It went on to say that "some previous recommendations are not addressed in the amendments or are addressed only to a limited degree".

42. Still, according to the Venice Commission, the current Electoral Code remains 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.

43. 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, candidate registration, observers, the electoral roll and its accuracy, as well as the complaints and appeals procedures.

44. The CEC is made up of 18 members elected by the parliament (six representatives each of the majority party, the opposition parties and the independent MPs). Some 16 members have already been elected and the CEC has reached the quorum required for it to operate, but the parties have yet to agree on the appointment of the last two members.

2.4. Preparation of the parliamentary elections on 7 November 2010

45. The opposition parties still play a less active political role than in previous years. The aftermath of the November 2005 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.

46. We have urged all political parties to take part in the elections and stressed not only the importance of the adoption and proper implementation of the law on freedom of assembly but also the freedom of the media in the light of the forthcoming parliamentary elections. We have called on the Azerbaijani authorities to pass on a clear message, in time for the 2010 parliamentary elections and at the highest political level, that electoral fraud will not be tolerated. We expect Azerbaijan to fully meet the Council of Europe commitments and standards for democratic elections.

47. In order for genuine democracy to be established, the members of the opposition whom we met want the Electoral Code and the composition of the electoral commissions to be revised, freedom of assembly in the capital and in the regions to be unrestricted, all alleged political prisoners to be released, media pluralism to be ensured and normal conditions established for the activity of political parties.

48. 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.

49. Since the country's 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 with a strong presidential system. As

21. Joint opinion on the draft law on amendments and changes to the Electoral Code of the Republic of Azerbaijan by the Venice Commission and OSCE/ODIHR, adopted by the Council for Democratic Elections at its 25th meeting (Venice, 12 June 2008) and the Venice Commission at its 75th plenary session (Venice, 13-14 June 2008), CDL-AD(2008)011.

previous monitoring reports have stressed, it is still necessary to reinforce the actual application of the constitutionally guaranteed principle of the separation of powers and, especially, to strengthen the parliament's role vis-à-vis the executive.

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

51. They all complained about the difficulties encountered in holding meetings or even in putting their names down on lists of candidates when elections are held.[22] According to them, some candidates have been forced to withdraw their candidatures, especially at the last municipal elections, for fear of being dismissed or of threats being made to them or their family. The owners of potential premises face the particular threat of losing their job or of family members losing their jobs and therefore refuse to rent out their premises to house their party's headquarters. Only the UMID party has succeeded in keeping its headquarters in Ganja, in premises rented by people living abroad.

52. 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 in the registration deposit, raising it to 300 000 Manats (about €230 000), 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.

53. An action plan to support the 2010 parliamentary elections in Azerbaijan is likely to be adopted by the Ministers' Deputies at their 1080th meeting on 24 March 2010. The aim of this programme is to deal with the most important issues, especially in several areas of focus that have been identified in co-operation with the Azerbaijani authorities and in liaison with other international institutions and where improvements are considered necessary. The issues involved are legislative aspects, the training of election administration staff, questions relating to the media, raising voter awareness of electoral issues, and the organisation of public debates.

3. Human rights and fundamental freedoms

3.1. Media pluralism and freedom of expression

54. On 17 December 2009, the European Parliament, in its resolution on freedom of expression in Azerbaijan, voiced its "concern about the deterioration of media freedom in Azerbaijan, deploring the practice of arresting, prosecuting and convicting opposition journalists on various criminal charges, as demonstrated in the case of Eynulla Fatullayev. It calls on the Azerbaijani authorities to release the imprisoned journalists immediately."

55. With regard to trials, human rights defenders and journalists have complained about the lack of impartiality in the court proceedings.

56. We reiterate the call for the decriminalisation of defamation, in line with the trend that can be seen at the international level and with the case law of the European Court of Human Rights, and we ask the authorities to refrain from bringing any new prosecutions against journalists for defamation. We consider that the extent of the criminal penalties imposed by the courts in defamation cases sometimes seems disproportionate and we call on the competent courts to ensure that any penalties imposed are proportionate to the offences established.

22. As a matter of fact, as mentioned in our previous reports and for reasons we have not understood, the leader of the opposition Popular Front, Mr Kerimli, has been refused a passport and cannot travel abroad since 2007. Upon our request for clarifications on this issue, the Azerbaijani authorities informed us that the Ministry of the Interior has never officially refused to issue a passport to Mr Ali Kerimli. The court of first instance that examined Mr Kerimli's case dismissed his application on the ground that he had not provided to the court sufficient evidence in support of the allegedly illegal behaviour of the Ministry of the Interior. We still fail to understand why Mr Kerimli has no passport and reiterate our request that he should soon receive one, especially if the Ministry of the Interior has not refused to grant him a passport.

57. We received the explanation form the authorities that the real problem behind the arrests of journalists is their lack of professionalism. However, we call on them to continue organising public debates on decriminalising defamation with the view of enacting relevant legislation in the future. We take note of the calls made by the authorities to the Committee of Ministers and other international organisations to contribute to the training of journalists and judges in this regard.

58. We would reiterate that, in response to the initiative of the Committee of Ministers' Monitoring Group (GT-SUIVI-AGO), a programme aimed at improving the professionalism of journalists was launched in Azerbaijan in 2008 with the assistance of the BBC. The Council of Europe could also examine other proposals that might be made to it with the same aim in mind.

59. We commend the efforts of the Government of Azerbaijan to strengthen the capacity and economic independence of the media, which is one of the prerequisites for independent and professional journalism. We take note of the creation of the Fund for State Support to Mass Media in April 2009 and encourage its use for support of independent investigative journalism and not only to award those who are loyal to the authorities. We call on the Government of Azerbaijan to continue this practice and seek enhanced co-operation with leading international institutions in this field.

60. We welcomed the fact that a presidential pardon decree of 28 December 2007 led to the release of six journalists.

61. On the eve of the 17 March 2009 referendum, the parliament passed an amnesty law on the occasion of the Feast of Novruz. The law applied to nearly 9 000 people (or about 35% of the total prison population) of whom 1 700 were released and 1 200 had their sentences reduced. The rest had their type of sentence changed.

62. We welcome the fact that the well-known journalist and poet Mirza Zakit came within the ambit of the recent amnesty law. He was released during our visit, on Tuesday 9 April 2009, two months before the end of his sentence, after spending thirty-four months in prison. Mr Zakit was one of the imprisoned journalists mentioned in several Parliamentary Assembly resolutions that called for their swift release.

63. On 11 April 2009, Ali Hasanov, editor-in-chief of the *Ideal* newspaper, was also released.

64. We welcome the release of Mr Mushvig Huseynov, a correspondent of the *Bizim Yol* newspaper, together with 99 other prisoners following the presidential pardon of 25 December 2009.

65. We also welcome the latest Pardon Decree of the President of the Republic of Azerbaijan, dated 16 March, 2010, which released 62 prisoners. It is important that among those pardoned is Mr Ganimat Zahidov, the editor of *Azadliq*, one of the main independent newspapers, whose name was mentioned in previous Assembly resolutions.

66. At the end of 2009, Mr Fatullayev was prosecuted again after the discovery of drugs found on him at his place of detention. On 31 December last, the Court of the Baku's Garadag district sentenced him to two months' provisional detention under Section 234.1 of the Azerbaijan Penal Code (illegal preparation, purchase, storage and sale of narcotics). On 29 December, officials from the Penitential Centre of Penitential Colony No. 12, where Mr Fatullayev has been serving a sentence of eight and a half years since 3 October 2007 for "threatening terrorism", "inciting racial hatred" and "tax evasion", declared they had found 0.22 grams of heroine in his sleeve and shoe during a search. Given these accusations, Mr Fatullayev could be sentenced to three more years' imprisonment. The hearings started in April 2010 and were still going on at the time of the drafting of this report.

67. Meanwhile, in its judgment of 22 April 2010 in the case of *Fatullayev v. Azerbaijan,*[23] the European Court of Human Rights unanimously found violations of Article 10 of the Convention in respect of the applicant's first criminal conviction, of Article 10 of the Convention in respect of the applicant's second criminal conviction, of Article 6, paragraph 1, of the Convention (the applicant's fear of the judge's lack of impartiality could be considered as objectively justified), and of Article 6, paragraph 2, of the Convention (as regards the statement made by the Prosecutor General to the press on 31 May 2007 amounted to an infringement of the applicant's right to the presumption of innocence).

23. Application No. 40984/07.

68. Of particular importance is the conclusion reached by the Court under Article 46 of the Convention: "the Court held that the respondent state shall secure the applicant's immediate release".[24] According to the Court, in such circumstances, in view of the above findings of violations of Article 10 of the Convention, it is not acceptable that the applicant still remains imprisoned, since the case does not leave any real choice as to the measures required.

69. This judgment will become final in three months, unless it is referred to the Grand Chamber by the Azerbaijani authorities.

70. As well as various human rights defenders, we met Mr Fatullayev's lawyer, who has expressed some serious doubts concerning the truth of the allegations and the conditions in which the drug was found. Mr Fatullayev has filed another application to the European Court of Human Rights in which he complains about violations of his right to a fair trial.

71. On 11 November 2009, the court of the Baku's Sabail district sentenced two activist bloggers, Mr Emin Milli and Mr Adnan Hajizade, to two years and six months' and two years' imprisonment respectively. They were found guilty under Sections 127.2.3 (deliberate light bodily injuries) and 221.2.1 (hooliganism) of the Penal Code. The international community, including the Council of Europe,[25] reacted strongly to this decision. The OSCE Representative on Freedom of the Media, Miklos Haraszti, described the sentencing of the two activist bloggers "as political".[26] Both co-rapporteurs, during their visit in February 2010, visited these two activists in jail. They stated not to have any complaints about the conditions of their detention.

72. We reiterate the appeal made by the Parliamentary Assembly for the release of all the other imprisoned journalists.

73. We wish to draw attention at this point to the death of Novruzali Mammadov, a researcher and linguist and editor-in-chief of the only Talysh-language newspaper, *Tolyshi Sado*. He was moved to Provisional Detention Centre No. 1 at the strict regime Penitential Centre No. 15, where he was put in a disciplinary cell. His case was mentioned in the last report on the functioning of the democratic institutions in Azerbaijan,[27] and his name is on the list of political prisoners drawn up by the Azerbaijan Federation of Human Rights Organisations.

74. At the time of our visit, there were three sets of judicial proceedings pending against Mr Mammadov: two before the Supreme Court (appeals filed on 29 March 2009 against his conviction for spying for Iran and against the destruction of his manuscripts)[28] and one before the Baku Court of Appeal concerning his being placed in a disciplinary cell at the penitential centre. As far as this latter appeal is concerned, the court held that the prison service had breached certain rules but considered his complaint about torture and maltreatment ill-founded.

75. With regard to the prison itself, the Director of Penitential Centre No. 15 was dismissed by the Minister of Justice in mid-February 2009 for disciplinary reasons. The new director seemed to have adopted a different approach to the prisoners, who are now treated better.

76. We welcome the efforts by the authorities to direct major investments in improving prison infrastructure through establishing new penitentiary facilities. We also take positive note of the measures taken by relevant government institutions to address prison overcrowding via the introduction of a system of probation and alternatives to imprisonment and through facilitating the social re-integration of prisoners once they have served their sentences.

77. We also welcome the decision by the Azerbaijani authorities to authorise the publication of the report of the last visit to Azerbaijan by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

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24. See paragraphs 176-177 of the judgment.
25. See the statement by the co-rapporteurs of the Parliamentary Assembly's Monitoring Committee, "Conviction of bloggers in Azerbaijan 'a blow to freedom of expression'", Strasbourg, 12 November 2009.
26. See the OSCE RFOM press release of 11 November 2009.
27. See Doc. 11627, 6 June 2008, paragraph 155.
28. On 27 May 2009, the appeal proceedings were held at the Supreme Court. It upheld the verdict of the Serious Crimes Court and the Court of Appeal, which had found Mr Mammadov guilty under Section 274 (high treason) and sentenced him to ten years' imprisonment in June 2008. The case was heard in camera without the accused or any observer being allowed to attend the proceedings. Mr Mammadov's lawyer stated his intention to file an application with the European Court of Human Rights.

78. All interlocutors concerned were waiting for the judgment to be delivered by the Strasbourg Court in the case of *Fatullayev v. Azerbaijan*. This judgment is the first on the subject of fair trials in the country.

79. In this connection, we have observed a tendency among the authorities to rely on the Strasbourg Court to rectify the shortcomings of the national appeals procedures. They show a willingness to co-operate on executing the Court's judgments but we cannot stress enough the need to undertake new reforms and modernise the judicial system to avoid an increase in the number of judgments against Azerbaijan.

80. We encourage Azerbaijan to continue furthering reforms in the field of judiciary. We take note of the achievements in this field, especially the setting up of an Academy of Justice to train judges, prosecutors and lawyers and sanctions imposed on judges found guilty of corruption.

81. We experienced an example of the dysfunctional nature of the Azerbaijani courts during our visit in 2009. On 7 April 2009, Mr Asif Merzili, editor-in-chief of the *Tezadlar* newspaper, was sentenced to twelve months' imprisonment under Section 147 of the Penal Code (defamation) and arrested in the courtroom (a second person, a journalist, was sentenced to six months of corrective labour for the same offence). Behind this conviction was the action brought by the rector of Azerbaijan's private International University for an article condemning the illegal admission of students and the issuing of bogus degrees. We expressed our concerns about this new arrest of a journalist, in response to which the authorities themselves indicated that they were also worried and President Aliyev issued a public statement in which he regretted the imprisonment of the journalist. The appeal was heard on 9 April 2009 and ended in Mr Merzili's acquittal and release. A warning was issued to the trial judge. This case once again raises the question of the decriminalisation of defamation in the country.

82. We also wish to cite the example of the legal proceedings instituted on 13 December 2008 by the Interior Minister, Ramil Usubov, against Ms Leyla Yunus, Director of the Institute for Peace and Democracy in Azerbaijan. We welcome the fact that Mr Usubov withdrew his complaint on 2 March 2009.

83. We are convinced that the decision of the European Court of Human Rights in the *Fatullayev v. Azerbaijan* case is of crucial importance for the functioning of the Azerbaijani judicial system and hope it will lead the authorities to refrain from arresting, prosecuting and convicting independent or opposition journalists on various bumped up criminal charges as demonstrated in the case of Eynulla Fatullayev.

3.2. Independence of the media

84. As far as the pluralism of the electronic media is concerned, Azerbaijan undertook when it joined the Council of Europe to turn the national television channel into a public channel run by an independent board of directors. In June 2007, the Council of Europe forwarded to the Azerbaijani authorities an expert opinion on the draft law on radio and television broadcasting and on the presidential decree approving the regulations of the National Television and Radio Broadcasting Council (NTRBC). In this expert opinion, the Council of Europe welcomed several provisions of the law that constituted genuine progress but emphasised a major problem, namely the fact that the state seems to have too great an involvement in broadcasting. The law provides for targeted state programmes and other direct state intervention in the field of broadcasting and the broadcasting council's funding comes directly from the state budget.

85. We regret that this expert opinion has not been followed up and are convinced it is necessary to revise these legal instruments in order to guarantee the independence of the electronic media and their regulatory authority, the NTRBC. We would also point out once again that pluralism and the impartiality of news and information programmes, especially in the public media, are essential for the holding of free and fair elections that meet the standards of the Council of Europe.

86. The Chair of the NTRBC confirmed to us that the situation remains somewhat blurred since the council is not treated as a public administration body (notably as regards increases in civil servants' salaries), but could not establish its own budget either. He also said that the council often invited leaders of political parties to participate in various programmes but they refused to do so.

87. For their part, media representatives, representatives of the opposition parties and human rights defenders that we met complained that the electronic media were controlled by the NTRBC, which considered it its duty to control the information broadcast on the Internet in order to ensure that regulations and the law were also complied with in the case of this medium.

88. Moreover, all the media representatives we met spoke about an economy monopolised, to the extent that the lack of a free newspaper advertising market hindered the development of a free and pluralist press in the country.

89. We are concerned about reports we have received on the Co-ordination Council recently set up by the Ministry of Communications and Technologies, which is said to be currently working on a plan to limit Internet access. Some media representatives expressed the view that, if implemented, this plan could lead to further restrictions on freedom of expression in the country.

3.3. Freedom of assembly and association

90. In paragraph 8.7 of its Resolution 1545 (2007), the Assembly welcomed the fact that the Azerbaijani authorities 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 commission and take appropriate measures to ensure that the implementation of the relevant legislation respected the guarantees of Article 11 of the European Convention on Human Rights as interpreted by the European Court of Human Rights. Violations of freedom of assembly and the excessive use of force by law enforcement agents should be stopped. It noted that ongoing training efforts in this respect were particularly welcome.

91. The Azerbaijani authorities have definitely begun to work with the Venice Commission on reforming the 1998 law governing freedom of assembly, which provided for numerous cases in which holding a meeting was systematically prohibited. The authorities put forward draft amendments to the Venice Commission, which approved an opinion on them at its session in December 2007.[29] The new law was adopted on 30 May 2008, and its implementation remains the key element, especially in connection with the preparations for next November's parliamentary elections.

92. Our interlocutors representing human rights defenders and the opposition parties complained that most public gatherings and demonstrations had to be cancelled at the last minute following a decision by the local administration to change the venue. In some cases, demonstrations had been interrupted by the police and the leaders of the groups concerned had been arrested, in most cases only for a short period.

93. We hope that once parliament has passed the revised law on freedom of assembly the authorities will concentrate on the introduction and application of awareness-raising measures and will provide the appropriate training for the competent authorities, which is crucially important, especially in the context of the forthcoming elections.

94. On 21 December 2009, President Aliyev signed a decree approving the NGO Law passed by the Azerbaijani Parliament on 30 June 2009, which sets registration requirements higher than for entrepreneurship. This decree adds a section to the law requiring the NGOs to declare all their funds to the Ministry of Justice in advance. This section has raised the NGOs' concerns regarding the question of time limits and obstacles to the activities.

95. Finally, a number of complaints from NGO representatives were reported to us concerning restrictions allegedly imposed on the operation of religious organisations. At a meeting with the Interior Minister, we pointed out the complaints from Jehovah's Witnesses about the difficulties they faced in holding meetings in certain regions, to which the minister replied that the police only intervened in places where those meetings were not being held in compliance with the law.

96. We also received alarming reports about the situation of human rights and freedoms in the Nakhchivan Autonomous Republic remaining tense in 2009 as in previous years.

97. Mr Herkel visited the Nakhchivan Autonomous Republic on 10 April 2009. This was the second visit by a rapporteur of the Monitoring Committee since Azerbaijan's accession,[30] accompanied by Ms Veronika Kotek, Special Representative of the Secretary General in Baku.

98. This one-day visit allowed a very limited number of meetings, which included the Chairman of Nakhichevan Republic Supreme Council, the ombudswoman and representatives of media and NGOs. As regards local democracy, the system remains unchanged since the first visit of a representative of the committee although the economic development has allowed a great growth in the republic which is now exporting energy to neighbour countries. The enclave remains a witness and victim of the Nagorno-Karabakh war with neighbouring Armenia. One of the consequences of the isolation of the enclave is very slow progress

29. CDL-AD(2007)042.
30. The first visit was paid by Mr Martinez-Casañ on 20 July 2002.

in the human rights situation. The institution of ombudsperson for example was set up together with the other regional institutions but remains cut off from the national ombudsperson, who regretted the lack of contact with her colleague from the Nakhchivan Autonomous Republic.

99. The programme also included a visit to the prison. It consists of brand new facilities opened this and last year respectively, which seem of high standard from the infrastructural point of view. The facility can hold some 450 inmates, though currently they only have some 42, with a total staff of around 100. They expect that 200-250 inmates will be transferred there in the middle of this year. The authorities intend to transfer the Nakhchivanis currently serving prison terms around Baku to these premises.

100. Cases of harassment of journalists who are subject to serious pressure from the authorities are repeatedly reported. On 16 January 2009, regional correspondent of Turan News Agency and “Azadliq” radio (Liberty) Malahat Nasibova, correspondents of Reporters Freedom and Safety Institute for Nakhchivan, Elman Abbasov and H. Mehdiyev, were subjected to physical pressure in the village of Heydarabad in Sadarak region when investigating the human rights situation there following events of unrest in the village.

101. On 14 and 26 April, opposition parties Musavat and the Azadliq bloc attempted to stage rallies protesting restrictions imposed on freedom of assembly. The unauthorised pickets took place in front of the Baku Local Executive Power and were quickly dispersed by police. Similar developments occurred on 30 April, marking the 1st anniversary of the shooting tragedy at the State Oil Academy (which left 12 dead and some 13 wounded), when youth activists attempted to hold their own commemoration. Again, police intervened immediately.

4. Conclusions

102. We welcome the openness for co-operation expressed by the authorities and urge them to continue to enlist the Organisation’s assistance.

103. We call on them to continue their efforts to establish all the conditions necessary for holding free and fair elections, especially in connection with the action plan proposed in collaboration with the Council of Europe.

104. The co-rapporteurs will prepare a report on the monitoring of Azerbaijan’s obligations and commitments after the election, for presentation to the Assembly in 2011.

Appendix – Press releases

Azerbaijan: PACE committee urges parliament to seek the Venice Commission's opinion

Strasbourg, 24 June 2009 – The Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) today urged the Parliament of Azerbaijan to seize the Venice Commission for an opinion on a package of amendments to the legislation on NGOs prior to their adoption, as well as for an opinion on the amendments on the Law on Freedom of Religion adopted in May 2009, in line with the spirit of co-operation with the Venice Commission set forth in the decree of the President of Azerbaijan of 3 April 2009.

The committee also made public an information note from the co-rapporteurs on recent legislative developments in Azerbaijan.

Parliamentarians want experts' opinion on constitutional changes in Azerbaijan

Strasbourg, 29 January 2009 – The Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), meeting today in Strasbourg, examined recent developments in Azerbaijan and decided to request the opinion of the Venice Commission – the Council of Europe's group of experts on constitutional law – on the package of constitutional amendments to be submitted to a nationwide referendum on 18 March 2009.

These amendments, adopted by the Azerbaijani Parliament on 25 December 2008, would abolish the limit on the number of consecutive terms of office for the President of the Republic, extend the term of office of the President and the Parliament in a time of war, as well as grant the right to introduce a legislative initiative if it has the support of 40 000 voters.

The committee will consider the opinion of the Venice Commission during a meeting in March.