Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1305 (2002)[1]

Honouring of obligations and commitments by Azerbaijan

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the efforts Azerbaijan has made since its accession to the Council of Europe on 25 January 2001 towards honouring its obligations and commitments, which it accepted in Opinion No. 222 (2000). Nevertheless, it notes that in a number of spheres Azerbaijan still needs to take substantial measures to improve the situation of the majority of the population and honour its commitments.

2. With regard to signature and ratification of conventions:

the Assembly is pleased to note that Azerbaijan has signed and ratified thirty-one conventions, including most of those included in its formal commitments;

nevertheless, some important conventions remain to be signed and ratified, including the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its additional protocols, the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption, within the time limits specified in Opinion No. 222;

some conventions which have already been signed need to be ratified, such as the European Social Charter, the European Charter for Regional or Minority Languages, the Convention on Mutual Assistance in Criminal Matters and its additional protocols, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

3. With regard to legal reforms:

the Assembly recognises that Azerbaijan has – in close co-operation with the Council of Europe experts – adopted laws or revised its legislation in many fields, including the Law on the institution of an Ombudsman, the Law on advocates and advocacy and the Code of Criminal Procedure. The Assembly recommends continuing this co-operation with the Council of Europe and asks Azerbaijan to improve in particular the law on advocates and advocacy and the Code on Criminal Procedure so as to ensure their full compatibility with the Organisation's principles and standards;

the Assembly welcomes the co-operation initiated with the Council of Europe regarding the draft law on the Constitutional Court, the Anti-corruption Law, the Law on Advocates and Advocacy and the Electoral Code; and it hopes that the recommendations made by the Council of Europe experts will be duly taken into consideration in the laws to be adopted. It also particularly calls for continued co-operation in appraising and improving media legislation and urges Azerbaijan to draft a law on national minorities.

the Assembly recalls that the honouring of commitments not only entails the formal reform of Azerbaijan's legal framework, but also the respect and proper implementation of existing legislation in the daily life of the people of Azerbaijan. The Assembly urges Azerbaijan to take the necessary steps to ensure that the newly reformed legal framework is evenly and systematically implemented throughout the country;

---

1. Assembly debate on 26 September 2002 (31st Sitting) (see Doc. 9545, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, rapporteurs: MM. Gross and Martínez Casañ). Text adopted by the Assembly on 26 September 2002 (31st Sitting).

the Assembly is informed that Azerbaijan has only partially honoured its commitment on ratifying conventions related to combating corruption. It recalls that combating corruption implies a commitment to an equitable evolution of society and a fair distribution of resources, and encourages the Azerbaijani authorities to take whatever steps are necessary to combat efficiently the rampant corruption that still exists in Azerbaijani society. The Assembly strongly encourages Azerbaijan to address its commitment regarding adopting an anti-corruption law and submit its draft to the Council of Europe experts for appraisal, as well as to draw up as quickly as possible a national programme for combating corruption;

the Assembly regrets the absence of progress in the development of local self-government in Azerbaijan. The Assembly calls upon the Azerbaijani authorities to proceed with adapting their legislation to the principles of the European Charter of Local Self-Government as well as to define and implement a genuine decentralisation strategy taking into consideration all the recommendations of Council of Europe Directorate General I and the Congress of Local and Regional Authorities of Europe;

the Assembly urges the Azerbaijani authorities to speed up their efforts and co-operate actively with the Council of Europe in checking on the Azerbaijani domestic law's compatibility with the European Convention on Human Rights.

4. With regard to separation of powers, the rule of law and democratic institutions:

the Assembly notes that the executive in Azerbaijan still exercises a predominant role. It expresses deep concern over the undue interference of the executive in the functioning of institutions. The Assembly particularly calls for a reinforcement of impartiality in the procedure of nomination of judges;

it is to be regretted that Parliament exercises no oversight of the government's activities, which means that the public at large is similarly excluded from this process. The Assembly calls for reinforcement of the role of Parliament and the establishment of its independence from and its controlling role vis-à-vis the executive. The Assembly notes that its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe intends to help this process by undertaking a more detailed evaluation of the current powers of Parliament and their exercise;

the Assembly has been informed that Parliament was consulted on the organisation of a referendum only after the presidential decree had established the date of the referendum, and regrets that the debate regarding this issue took place hastily, and at very short notice. Although Azerbaijani law does not require the President to conduct any preliminary consultations with Parliament, it would nevertheless have been desirable to determine a priori the opinion of Parliament on such important issues for the future political life of the country and its stability and inter-party political dialogue as amendments to the constitution. Not only should the thirty-nine amendments to the constitution have been discussed and approved much earlier by Parliament, but the politically sensitive issue of regrouping the thirty-nine changes into eight questions should have been decided by Parliament rather than by the administration.The Assembly recommends reinforcing the legislative role of Parliament, in particular in drawing up laws and in debating major political issues;

the Assembly welcomes the efforts that enabled the first Ombudsperson to be elected in Azerbaijan in July 2002. It conveys its best wishes for the newly established institution in Azerbaijan and underlines the importance of the independence of the Ombudsperson as well as his/her essential role in facilitating the effective implementation of the European Convention on Human Rights in Azerbaijan;

the Assembly congratulates the Azerbaijani authorities for fulfilling their commitment and giving access to the Constitutional Court to the ordinary courts, the newly created ombudsman institution and, in specific cases, to individuals. It welcomes the introduction in the constitution of such provisions. It encourages Azerbaijan to maintain close co-operation with the Council of Europe for finalising and adopting the statute of the Constitutional Court.

5. With regard to pluralist democracy:

the Assembly notes the co-operation initiated with the Council of Europe with regard to amending the Electoral Code, and hopes not only that the experts will be consulted for appraisal of the final version, but that their recommendations will be scrupulously taken into consideration. During the last parliamentary elections (2000-2001), as well as during the referendum of 24 August 2002, numerous dysfunctions and procedural irregularities were observed. The current reform process of the Electoral Code should take all these observations into consideration for the drafting of the new code. In particular, the Assembly hopes that the provisions regulating the composition of the electoral commissions, the participation of local observers, the adjudication of electoral complaints, the registration of candidates, the accuracy of voters' lists, the training of the members of elections commissions and the transparency of the entire election process will be congruent with the Council of

Europe and OSCE standards. The Assembly requests the Azerbaijani authorities to ensure that the law in question guarantee equal access of all political parties to the electoral process, and that it be implemented at least six months before the presidential elections;

the Assembly is disappointed that the Council of Europe was not consulted on the wording of the questions and the organisation of the 24 August 2002 referendum. Nevertheless, the Assembly welcomes the fact that the Azerbaijani authorities decided to present the constitutional changes in the form of eight questions, which enabled the voters to vote separately on the different issues submitted to referendum. As during most of the previous elections, numerous cases of fraud marred the election process and could cast serious doubts on the validity of the results of the impressive vote, indicating a turnout of over 83% of registered voters, out of which more than 96% voted in favour of the amendments proposed. It welcomes the fact that because of obvious falsifications, the results of the vote were cancelled in about 251 constituencies by the electoral authorities. It is to be regretted that this referendum, which could have given the Azerbaijani nation an opportunity for real confidence in the electoral process and helped in developing a democratic culture in the country with a better design of the procedures, failed to do so. Finally, it is welcomed that for the first time – with the assistance of the OSCE office in Baku – round tables were organised on television on the eve of the referendum between representatives of the government, opposition and civil society to debate publicly the controversy and political impact of this referendum;

the Assembly notes a growing need to grant citizens the fundamental right to take part in the political life of the country. The Assembly urges Azerbaijan to promote confidence and an inclusive climate in politics, particularly by involving members of the opposition in the round tables on the new Electoral Code;

the Assembly calls on Azerbaijan to ensure that the forthcoming presidential elections are held – on the basis of the newly reformed Electoral Code – fully in respect of international standards in order to achieve a broad political consensus.

6. With regard to human rights and fundamental freedoms:

the Assembly has noted certain steps undertaken by the Azerbaijani authorities to improve the human rights situation. Nevertheless, it calls for effective arrangements to protect freedom of expression, of association and of peaceful assembly which are necessary for the sound development of democratic society in Azerbaijan. It draws particular attention to the promotion of the specific rights of religious and national minorities;

having noted the absence of real dialogue between the ruling party and opposition forces, as they are very poorly represented in Parliament, the Assembly calls for efforts to be made not only on the governmental side but also on the opposition side to reach a satisfactory level of co-operation and dialogue necessary for the development of a real pluralist democracy. It particularly recommends that the authorities offer the opportunity for non-represented parties to express their opinions in a peaceful manner by organising regular exchanges of views on important subjects and draft laws;

the Assembly is disturbed and shocked by a number of reported human rights violations and urges the Azerbaijani authorities to take all necessary measures to guarantee all citizens with those basic freedoms. It calls for improvement of the working modalities and registration procedures of local non-governmental organisations and for a better and more fair administration of requests for public demonstrations. The Assembly reiterates that it is unacceptable to the Council of Europe that the development of civil society be hampered by excessive administrative or political barriers;

the Assembly deplores the cases of overreaction leading to undue use of weapons by police forces against civilians that were reported recently. It is very concerned about the government's response to public protests related to social issues. It calls for the police forces to react in an adequate and proportionate manner when civilians and citizens are involved in police intervention and appeals to the authorities to address and remedy the causes of this social unrest.

7. With regard to freedom of the media:

the Assembly is pleased to note progress in the field of media legislation. It welcomes the co-operation initiated with the Council of Europe in this sphere. The Assembly expects that this fruitful co-operation will enable the Azerbaijani authorities to enact a law on public and private broadcasting and a decree on the creation of a national council on radio and television broadcasting that are fully in line with Council of Europe standards;

the Assembly is very concerned with cases of interference with freedom of expression, pressure on the independent media and harassment of journalists, and calls on Azerbaijan to take all necessary steps to guarantee freedom of expression and the independence of the media and journalists, and particularly to exclude the unacceptable use of administrative measures to restrict the freedom of the media;

the Assembly calls upon the Azerbaijani authorities to engage in dialogue as soon as possible with the Council of Europe in order to ensure that the decree of 11 September 2002 does not contradict Azerbaijan's commitment to promote freedom of the media.

8. With regard to political prisoners:

the Assembly welcomes the fact that the President has issued several pardons since the country's accession to the Council of Europe. It takes note that among the pardoned prisoners a significant number were considered political prisoners by the Council of Europe experts;

the Assembly is aware that new trials of persons considered by the experts as political prisoners have started. It is concerned with reports of blatant violations of their procedural and other rights. It reiterates that these trials should respect all provisions for a fair trial as defined in the European Convention on Human Rights, including that they be accessible to journalists. It considers that these trials, which started several months ago, should not be dragged out for a long period and must be concluded rapidly;

the Assembly is profoundly disturbed by the fact that seven out of the seventeen pilot cases of persons found to be political prisoners by the Council of Europe experts are still detained and have neither been pardoned nor granted retrial, namely: Amiraslanov Elchin Samed Oglu (case No.5), Efendiyev Natig (case No.7) who is apparently seriously ill, Kazymov Arif Nazir Oglu (case No.15), Abdullayev Galib Jamal Oglu (case No.16), Guseynov Suret Davud Oglu (case No.17), Safikhanov Ilgar (case No.18), and Guseynov Guseynbala (case No.25);

the Assembly urges the Azerbaijani authorities to take the necessary steps as soon as possible to ensure the fulfilment of their obligations and recalls that, particularly in the case of sick detainees, release on humanitarian grounds should be considered;

the Assembly reiterates that for a Council of Europe member state the detention of political prisoners is totally unacceptable. It insists that the Azerbaijani authorities show real determination to eradicate a practice which is a blot on Azerbaijani society, and that they avoid new imprisonments which are solely based on political activities;

the Assembly recalls that a democratic state which is a member of the Council of Europe should promote internal stability through constructive dialogue with all political forces in the country, and should avoid solving social and political discontent through practices resulting in new imprisonments of people for political reasons;

finally the Assembly stresses the importance of continued co-operation with the Council of Europe experts. It particularly asks the Azerbaijani authorities to provide the Council of Europe as quickly as possible with the requested documentation, including all the transcripts of judgments necessary for the examination of the remaining cases.

9. With regard to the settlement of the Nagorno-Karabakh conflict:

the Assembly recognises and welcomes the undoubted efforts Azerbaijan has made to maintain regular high-level contacts with Armenia with a view to reaching a suitable and peaceful solution to this conflict;

however, the Assembly is concerned with the prevailing frustration, which is more and more frequently expressed in Azerbaijani society, at the deadlocked negotiations on the conflict;

the Assembly strongly hopes that the ongoing negotiation process – including the recent meeting of the presidents of both countries in Nakhitchevan – will soon lead to an acceptable settlement of the territorial conflict in line with the principles of the Council of Europe and international law;

it recalls that closing the monitoring procedure can only be envisaged upon fulfilment of all major commitments, which includes, in the case of Azerbaijan and Armenia, an agreement on the peaceful settlement of the Nagorno-Karabakh conflict including the occupied territories, which has been pending for more than eight years now.

10. In view of the above considerations, the Assembly concludes that certain progress has been made since its accession. However, the Assembly has to insist that Azerbaijan needs to make significant progress in honouring all of its obligations and commitments as a member state of the Council of Europe. Therefore, the Assembly decides to pursue the monitoring procedure in respect of Azerbaijan in close co-operation with the Azerbaijani delegation.

11. The Assembly urges the Azerbaijani authorities to improve as quickly as possible media legislation and the Electoral Code in particular, and to define and implement, together with the Council of Europe and the Congress of Local and Regional Authorities of Europe, a decentralisation strategy, aimed at increasing local governments' competences, responsibilities and resources.