Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1457 (2005)[1]

Follow-up to Resolution 1359 (2004) on political prisoners in Azerbaijan

Parliamentary Assembly

1. Since 2001, when Azerbaijan joined the Council of Europe, the Parliamentary Assembly has considered the issue of political prisoners in Azerbaijan on three occasions: January 2002, June 2003 and January 2004. In its Resolution 1359 (2004) the Assembly "formally ask[s] the Government of Azerbaijan for the immediate release on humanitarian grounds of political prisoners whose state of health is very critical, prisoners whose trials were illegal, prisoners having been political activists or eminent members of past governments, and members of their families, friends or persons who were linked to them … [and] the remaining political prisoners already identified on the experts' list."

2. Since Resolution 1359 (2004) was adopted, the President of the Republic of Azerbaijan, Mr Ilham Aliyev, has signed six pardon decrees: on 17 March, 10 May, 3 September and 29 December 2004, and 20 March and 20 June 2005. They permitted the release of 52 political prisoners and 93 presumed political prisoners, including three high-ranking political figures – Suret Huseynov, the former Prime Minister, Raqim Gaziyev, the former Defence Minister, and Alikram Gumbatov – and seven leading members of the political opposition.

3. The Assembly particularly welcomes the last pardon decrees of President Aliyev on 20 March and 20 June 2005 as a decisive step towards a solution to the problem, resulting in the release of a large number of political prisoners.

4. The Assembly commends the work of the independent experts appointed by the Secretary General of the Council of Europe in 2001 to examine the list of 716 names of presumed political prisoners. They completed their mandate in July 2004 after submitting a total of 124 opinions and concluding that 62 of the people concerned were political prisoners.

5. The Assembly regrets the former Secretary General's decision not to extend the independent experts' mandate to enable them to examine the additional list of cases of presumed political prisoners that were omitted when the first list was drawn up.

6. The Assembly welcomes the constructive and open dialogue with the parliamentary delegation of Azerbaijan to the Assembly. It recognises that genuine efforts have been made by the delegation in the search for a final resolution of this issue. It particularly welcomes the setting up of a task force comprising representatives of the authorities and of human rights NGOs, and supports initiatives which contribute to developing a true dialogue with civil society.

7. The Assembly also notes that there are a number of persons in the lists submitted by the human rights protection organisations whose retrials raise concerns as to their compliance with fair trial standards. It welcomes the decision of the Azerbaijani authorities to provide these persons with an additional opportunity to apply to the European Court of Human Rights and to use other remedies for eliminating any violations committed during their trials.

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1. Assembly debate on 22 June 2005 (21st Sitting) (see Doc. 10564, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bruce).

8. The Assembly firmly condemns the serious dysfunctions of the Azerbaijani judicial system, resulting in the creation of new cases in which dozens or even hundreds of people find themselves charged and tried collectively for offences, such as attempted coups, offences against state security, terrorism and serious breaches of the peace, which do not always relate to the facts.

9. The Assembly regrets that, in spite of its repeated requests, the Azerbaijani authorities have continued to arrest and convict hundreds of persons for clearly political reasons:

190 persons were arrested in connection with the events of October 2003. Of these, 47 were sentenced to terms of imprisonment and 88 others given suspended sentences; 36 were pardoned on 20 March 2005 and the 11 others were released by court decision or at the end of their sentence;

about 60 others have been arrested and convicted since 2001-2002 in connection with other cases, most of them without foundation.

10. The Assembly takes note of the task force's conclusion concerning the three persons regarded as "political prisoners" by the independent experts that, taking into account the alleged violent nature of their crimes and all other specifics of their cases, no insistence will be made for extra-judicial release of those persons. The Assembly also takes note of the Azerbaijani authorities' undertaking to open the possibility for these persons to apply to the European Court of Human Rights in the case of unsatisfactory retrial of appeal in the courts of Azerbaijan.

11. In the light of the commitments entered into and the assurances given by the Azerbaijani authorities that the issue would be dealt with to the Assembly's satisfaction by the autumn 2004 session, the Assembly cannot consider the issue of political prisoners to have been finally resolved since:

three political prisoners recognised as such by the independent experts are still detained;

another 41 persons who have not been recognised as political prisoners by the independent experts are also still in prison, including contentious cases or cases of prisoners whose state of health gives cause for concern and to which the Assembly has drawn the authorities' attention on several occasions;

at least 45 persons whose cases were not submitted to the independent experts, whose names were omitted from the initial list submitted to the experts or who were arrested and convicted after the commencement of their mandate and are considered by the Assembly as presumed political prisoners, are also still detained.

12. The Assembly takes note of the undertaking made by the Azerbaijani authorities to review the cases of 36 of the 45 alleged political prisoners and of the 41 non-political prisoners. It asks the Azerbaijani authorities to either release these persons conditionally or organise as soon as possible an appeal trial, a cassation trial or a retrial, provided these procedures comply fully with the requirements of a fair trial as laid down in the European Convention on Human Rights.

13. The Assembly is shocked by the violence with which the mutiny attempts in certain prisons were put down in February 2005. It firmly condemns the recourse to violence and the maltreatment and torture inflicted on political prisoners and presumed political prisoners and calls on the Azerbaijani authorities to put an end to the impunity enjoyed by certain units of the security forces. It is profoundly shocked that members of the organised crime unit, which serves as a torture centre in Azerbaijan, have been promoted in recognition of the services they have rendered.

14. The Assembly is also still worried about the conditions of detention and restrictions on the rights of prisoners and their families. It calls on the Azerbaijani authorities to implement speedily the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

15. The Assembly deplores the conditions of the release of Alikram Gumbatov who was forced into exile and has had his Azerbaijani nationality withdrawn. It wishes to express its gratitude to the Government of the Netherlands which has granted him political asylum and whose mediation with the authorities in this matter has made it possible to achieve a positive outcome.

16. The Assembly welcomes the work which NGOs in Azerbaijan have been doing for many years with courage and determination, under difficult conditions, to help prisoners and their families.

17. It asks the Azerbaijani authorities to better apply to political and presumed political prisoners the provisions of the Criminal Code (Articles 76, 77 and 78) allowing for the possibility of conditional release where a convicted person has already served either two-thirds or three-quarters of his or her sentence.

18. The Assembly resolutely reaffirms its position of principle that detainees recognised as political prisoners must be released. It calls on the Azerbaijani authorities to find a speedy and permanent solution to the issue of political prisoners and presumed political prisoners:

by releasing the three remaining political prisoners as determined by the independent experts or by opening the possibility for their cases to be effectively considered by the European Court of Human Rights by a retrial or an appeal, as proposed by the Azerbaijani authorities;

by immediately releasing presumed political prisoners who have already served several years of their sentence, in application of the provisions of the Criminal Code relating to conditional release;

by releasing or retrying presumed political prisoners whose convictions were in breach of fair trial principles;

by releasing on humanitarian grounds presumed political prisoners who are seriously ill;

by releasing or retrying presumed political prisoners who were involved in certain political events only to a minor and very secondary degree, as the people presumed to have instigated the events have themselves already been pardoned;

by releasing presumed political prisoners who have no connection with the events in question other than that they are relatives, friends or mere acquaintances of leading members of former governments;

and it welcomes the undertaking by the Azerbaijani authorities to "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".

19. The Assembly notes that the criminal law in force in Azerbaijan contains provisions and provides for procedures that have obviously survived from Soviet legislation. It urges the Azerbaijani authorities to work actively and fully with the Council of Europe on reforming the judicial system and, in particular, to forward to it without delay the Criminal Code in order to check its compatibility with the European Convention on Human Rights and the Court's case-law.

20. In view of the number of prisoners who have been pardoned but are deprived of their civic rights and of people who have been given suspended prison sentences and face the lifting of the suspension for the slightest misdemeanour, the Assembly expresses serious misgivings about whether the parliamentary elections to be held in November 2005 will be free and fair.

21. Lastly, the Assembly renews its request to the Azerbaijani Parliament to pass without delay a law granting a general amnesty, as a measure of national reconciliation, to groups of persons involved in certain events. Such a measure is the only means of securing the release of presumed political prisoners and terminating the proceedings against those who have fled the country and who, as political exiles, now wish to return to Azerbaijan and are prevented from participating in the public life in their country.