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The honouring of obligations and commitments by Azerbaijan

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr Pedro AGRAMUNT, Spain, Group of the European People's Party, and Mr Joseph DEBONO GRECH, Malta, Socialist Group

Summary

The Monitoring Committee recognises the progress made by Azerbaijan with regard to the establishment of the legislative framework in some areas crucial for the functioning of democratic institutions since its accession to the Council of Europe. However, restrictive application or violations of some laws are resulting in growing concern with regard to the rule of law and respect for human rights.

The lack of independence of the judiciary is a concern. The situation with regard to basic freedoms, including freedom of expression, freedom of assembly and freedom of association is preoccupying. The committee expresses its alarm at reports by human rights defenders and domestic and international NGOs about the alleged use of so-called fabricated charges against activists and journalists. The combination of the restrictive implementation of freedoms with unfair trials and the undue influence of the executive results in the systemic detention of people who may be considered prisoners of conscience. Alleged cases of torture and other forms of ill-treatment at police stations, as well as the impunity of perpetrators, raise major concern.

Despite the progress achieved in the introduction of a legislative framework aimed at fighting corruption and organised crime, the main challenge lies in the effective application of that legislation.

1. Reference to committee: Resolution 1115 (1997).

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A. Draft resolution[2]

1. Azerbaijan joined the Council of Europe on 21 January 2001. Upon accession, it committed itself to respect the obligations incumbent upon every member State under Article 3 of the Statute with regard to pluralist democracy, the rule of law and human rights. It also undertook a number of specific commitments listed in Parliamentary Assembly Opinion 222 (2000) on Azerbaijan's application for membership of the Council of Europe.

2. In accordance with the monitoring procedure, as set out in Resolution 1115 (1997) and amended by Resolutions 1431 (2005) and 1515 (2006), the Assembly assessed the progress made by Azerbaijan in the fulfilment of its obligations and commitments in Resolutions 1305 (2002) and 1545 (2007) on the honouring of obligations and commitments by Azerbaijan and in Resolutions 1358 (2004), 1398 (2004), 1456 (2005), 1614 (2008) and 1750 (2010) on the functioning of democratic institutions in Azerbaijan.

3. The Assembly acknowledges the geopolitical context of Azerbaijan, situated as it is at the crossroads of Europe and Asia, positioned between the Russian Federation, Iran and Armenia, and inhabited by a population the overwhelming majority of which is Muslim. Furthermore, the Assembly is fully aware of the ongoing conflict with Armenia over Nagorno-Karabakh, which to a large extent dominates the Azerbaijani foreign policy agenda. The Assembly regrets that the negotiations have not led, so far, to any tangible results and that the resolutions by the Parliamentary Assembly, the European Parliament, the Organization for Security and Co-operation in Europe (OSCE) and the United Nations Security Council have to date not been implemented.

4. The Assembly recalls with satisfaction that the authorities have always declared their pro-European aspirations and pursued a policy of integration with Euro-Atlantic structures. Relations with the European Union are governed by the EU-Azerbaijan Partnership and Cooperation Agreement. Furthermore, Azerbaijan has been part of the European Neighbourhood Policy since its launch in 2004, the Eastern Partnership since 2009 and is a founding member of Euronest.

5. Since its accession, Azerbaijan has made substantial progress with regard to the signature and ratification of Council of Europe legal instruments. Azerbaijan has signed and ratified all but one of the legal instruments included in its list of commitments. The Assembly calls on Azerbaijan to ratify the remaining convention, the European Charter for Regional and Minority Languages (ETS No. 148), which it signed in 2001.

6. Clear progress has also been made in the establishment of the legislative framework in some areas crucial for the functioning of democratic institutions in compliance with European standards. In particular, the establishment in 2005 of the Judicial Legal Council constituted an important step in the country's judicial reform. Recently adopted legal acts providing for a revised recruitment procedure for judges, amendments to the Law on Combating Corruption and to the Criminal Code with regard to the criminalisation of corruption mark further progress in this respect. The Assembly commends the Azerbaijani authorities for their fruitful co-operation with the European Commission for Democracy through Law (Venice Commission). The recent request by the authorities for assistance in drafting a new law on defamation is a good example of such co-operation.

7. Regrettably, progress in terms of implementation of some laws has not been satisfactory. Restrictive application or violations of some of them are resulting in growing concern with regard to the rule of law and respect for human rights.

8. Since Azerbaijan's accession to the Council of Europe, not a single parliamentary or presidential election has fully met democratic standards, as has also been confirmed by the judgments of the European Court of Human Rights in seven cases out of the 35 considered admissible relating to the 2005 parliamentary elections. Numerous cases relating to the 2010 elections are pending before the Court. A number of shortcomings and deficiencies in the electoral process, in particular with regard to the electoral code, the composition of the electoral commissions, candidate registration, observers and the complaints and appeals procedure, must be addressed in time for the next elections.

9. The Assembly expresses its deep conviction that it is in the best interests of the democratic process and the ruling party itself to confront the opposition in a representative body and establish a truly meaningful political dialogue within parliament. However, since the last parliamentary elections in 2010, some well-known

2. Draft resolution adopted by the committee on 12 December 2012.

Azerbaijani opposition parties are not represented in parliament and the ruling party is the only one which is eligible to establish a political group. Independent parliamentarians, albeit often critical towards the government, have little chance of making their voices heard.

10. Regrettably, there is no political dialogue with the opposition parties outside parliament. The Assembly is concerned by the restrictive climate for the activities of the extra-parliamentary opposition, which complains about limitations imposed on freedom of expression and freedom of assembly and lack of access to the public media.

11. The establishment of an inclusive political system and a truly competitive and unrestrictive political environment requires full implementation of basic freedoms, including freedom of expression, freedom of assembly and freedom of association. The situation in Azerbaijan is preoccupying and the Assembly expresses its deep concern in this regard.

12. Recently adopted amendments to the Criminal Code and the Administrative Code, which have increased penalties for the organisers of, and participants in, "unauthorised" gatherings, raise concern. Considering the authorities' ongoing blanket ban on protests in Baku city centre, these amendments are likely to have a further negative impact on freedom of assembly and freedom of expression. The restrictive use of certain articles of the Criminal Code, in particular Articles 221 and 233, against participants in peaceful, albeit unauthorised, demonstrations, is another matter of concern.

13. The Assembly recalls that the independence of the judiciary is one of the basic preconditions for the rule of law, as well as the democratic principle of the separation of powers and systems of checks and balances. The lack of independence of the judiciary is a concern in Azerbaijan, where the executive branch, in some particular cases, continues to exert influence on it. The fairness of trials, including at the pre-trial stage, and equality of arms constitute other major concerns.

14. The Assembly is alarmed by reports by human rights defenders and domestic and international non-governmental organisations (NGOs) about the alleged use of so-called fabricated charges against activists and journalists. The combination of the restrictive implementation of freedoms with unfair trials and the undue influence of the executive results in the systemic detention of people who may be considered prisoners of conscience.

15. Alleged cases of torture and other forms of ill-treatment at police stations, during the investigation period and in penal institutions, as well as the impunity of perpetrators, are other matters of major concern.

16. The Assembly is concerned by the criticism voiced by the domestic and international communities with regard to irregularities in the expropriation campaign started in 2009 in Baku. It urges the authorities to ensure transparency of the process, compliance with the Constitution and the domestic law, and full respect for human rights. It also calls for the revision of the cases which give rise to justified doubts and legitimate concerns about their conformity with the law, as well as the investigation of reports of alleged abuses and violations during the expropriation and reconstruction procedures, followed by adequate compensation and the bringing to justice of those who have violated the laws.

17. Despite the progress achieved in the introduction of a legislative framework aimed at fighting corruption and organised crime, the main challenge lies in the effective application of that legislation. Results from the anti-corruption campaign, launched in 2011, still remain to be seen.

18. Taking all these concerns into account, the Assembly calls on the Azerbaijani authorities to:

18.1. With regard to the functioning of pluralist democracy:

18.1.1. address the shortcomings and deficiencies identified by international observers during the last presidential and parliamentary elections; introduce changes to the Electoral Code in line with the recommendations of the Venice Commission in time for the next presidential election;

18.1.2. create an unrestrictive and inclusive political environment; establish a meaningful dialogue with the extra-parliamentary opposition;

18.1.3. address the question of the funding of political parties in compliance with Committee of Ministers Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns;

18.1.4. reinforce the actual application of the constitutionally guaranteed principle of the separation of powers and strengthen parliamentary control over the executive, and in particular:

18.1.4.1. review the parliament's internal rules with a view to strengthening the possibilities for parliamentary action by individual members of parliament who are not members of the parliamentary group of the ruling party;

18.1.4.2. review the parliament's internal rules with a view to lowering the number of members of parliament required for the establishment of a parliamentary faction to between 3% and 5% as is the case in other European States;

18.2. With regard to the judiciary:

18.2.1. ensure full independence of the judiciary, in particular vis-à-vis the executive, and refrain from any pressure on it;

18.2.2. enact in law the role of the Judicial Legal Council as guarantor of the independence of the judiciary and implement the law effectively;

18.2.3. establish a fixed retirement age valid for all judges;

18.2.4. conduct an analysis of the deficiencies in judicial practice and give full consideration to reports of alleged shortcomings resulting in unfair trials with a view to addressing them;

18.2.5. develop a human resources strategy which encourages professionalism, independence and integrity, and establish a uniform and consistent mechanism for assessing the performance of judges which is linked with career development;

18.2.6. establish a single, effective system of random, nationwide allocation of cases;

18.2.7. refrain from any pressure on lawyers defending activists and journalists critical of the authorities and ensure effective investigation into all reported cases of pressure with a view to bringing the perpetrators to justice;

18.2.8. ensure effective investigations with regard to all cases of alleged corruption in the judiciary;

18.2.9. encourage the involvement of civil society in defining and monitoring further strategies for the reform of the judiciary;

18.3. With regard to corruption and organised crime:

18.3.1. step up efforts to implement effectively existing anti-corruption legislation;

18.3.2. fulfil the recommendations of the Group of States against Corruption (GRECO);

18.3.3. pursue work on the drawing up of the draft law on the prevention of conflicts of interest;

18.3.4. encourage the involvement of civil society in defining and monitoring strategies for the fight against corruption and organised crime;

18.4. With regard to alleged political prisoners and prisoners of conscience:

18.4.1. review the cases of human rights defenders, activists and journalists detained on criminal charges following trials whose conformity with human rights standards has been called into question by civil society and the international community;

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

18.4.3. release on humanitarian grounds alleged political prisoners whose state of health raises concern;

18.4.4. fully implement the resolutions of the Assembly related to alleged political prisoners in Azerbaijan;

18.5. With regard to torture and ill-treatment by law enforcement agents:

18.5.1. pursue efforts to eradicate abuses by law enforcement officials by effectively implementing the measures to eliminate impunity and the lack of accountability for such abuses; in particular by ensuring proper investigations into individual cases;

18.5.2. ensure effective investigation into all reported cases of alleged torture or ill-treatment with a view to bringing the perpetrators to justice;

18.5.3. introduce more effective measures and procedural safeguards against ill-treatment and torture in police stations, in compliance with European standards, such as installation of cameras;

18.5.4. promote civil society monitoring and develop further training and awareness-raising measures;

18.5.5. pursue efforts in the implementation of the National Mechanism for the Prevention of Torture and Ill-Treatment, and involve the civil society in the process;

18.6. With regard to freedom of expression:

18.6.1. pursue efforts to elaborate a new law on defamation in co-operation with the Venice Commission;

18.6.2. create the proper conditions for journalists to carry out their work and refrain from any kind of pressure;

18.6.3. end practices of prosecution of journalists or others who express critical opinions;

18.6.4. effectively investigate the murders of Mr Elmar Huseynov and Mr Rafiq Tagi and bring the perpetrators to justice;

18.6.5. effectively investigate all cases of beatings reported by journalists and bring the perpetrators to justice;

18.7. With regard to freedom of assembly:

18.7.1. ensure respect for freedom of assembly, and in particular:

18.7.1.1. find a compromise solution to allow protest actions in some areas of Baku city centre, complying with security requirements and acceptable for both the organisers and the authorities;

18.7.1.2. refrain from using disproportionate police force against peaceful protesters;

18.7.1.3. refrain from the restrictive use of certain articles of the Criminal Code, in particular Articles 221 and 233, against participants in peaceful, albeit unauthorised, demonstrations;

18.8. With regard to freedom of association:

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

18.8.2. improve and facilitate the registration procedures for international NGOs;

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

18.9. With regard to freedom of conscience and religion:

18.9.1. review the law on freedom of religion with a view to addressing the concerns expressed by the Venice Commission;

18.9.2. improve and facilitate the registration procedures for minority religious groups.

19. The Assembly encourages the authorities to step up their efforts to implement legislation in the areas crucial for the proper functioning of democratic institutions. Against this background, the Assembly decides to continue the monitoring of Azerbaijan’s obligations and commitments.

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

1. Introduction

1. Azerbaijan became a member of the Council of Europe on 21 January 2001. Upon its accession, Azerbaijan undertook to honour not only the obligations incumbent on all member States under Article 3 of the Organisation's Statute, but also a number of specific commitments set out in Opinion No. 222 (2000), which, together, constitute the basis for the monitoring procedure in accordance with Resolution 1115 (1997) on the setting up of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee), as modified by Resolution 1431 (2005) on the initiation of a monitoring procedure and post-monitoring dialogue, Resolution 1515 (2006) on the progress of the Assembly's Monitoring Procedure (May 2005-June 2006) and Resolution 1710 (2010) on the term of office of co-rapporteurs of the Monitoring Committee.

2. Since then, the Monitoring Committee has presented to the Parliamentary Assembly a number of reports on the progress made in Azerbaijan: full reports on the honouring of obligations and commitments in 2002 and 2007, and reports on the functioning of democratic institutions in 2004, 2005, 2008 and 2010.[3]

3. Furthermore, several reports have been presented by the Committee on Legal Affairs and Human Rights on the honouring of a specific commitment, namely that of releasing or re-trying alleged political prisoners.[4] The most recent report on this subject is due to be debated in the Assembly during the January 2013 part-session.[5]

4. Moreover, Azerbaijan has been examined in periodic reports on the implementation of judgments of the European Court of Human Rights ("the Court") in all Council of Europe member States, prepared by the Committee on Legal Affairs and Human Rights. The most recent report in this respect was presented to the Assembly in 2011.[6]

5. Some outstanding concerns in the field of human rights in Azerbaijan have also been the subject of thematic reports on all or some Council of Europe member States drawn up by other Assembly committees. Of particular relevance here are the report on the freedom of expression in Council of Europe member States presented by the Committee on Culture, Science and Education[7] as well as the report on human rights defenders in Council of Europe member States presented by the Committee on Legal Affairs and Human Rights.[8] In October 2012, the Parliamentary Assembly held a current affairs debate on the Safarov case.

6. The political developments of the Nagorno-Karabakh conflict have been followed by the Committee on Political Affairs and Democracy.[9] The specific situation of refugees and displaced persons in Azerbaijan has been dealt with by the Committee on Migration, Refugees and Displaced Persons.[10]

7. Representatives of the Assembly have also systematically observed parliamentary and presidential elections, as well as a constitutional referendum, since Azerbaijan's accession and the respective reports were presented to the Assembly.[11] The conclusions of the report following the elections in 2005 led to the credentials of the Azerbaijani delegation being challenged at the opening of the Assembly's January 2006 part-session.[12]

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3. They resulted in the adoption by the Assembly of the following Resolutions: 1305 (2002), 1358 (2004), 1398 (2004), 1456 (2005), 1545 (2007), 1614 (2008) and 1750 (2010).
4. See Resolutions 1272 (2002), 1359 (2004), 1398 (2004) and 1457 (2005).
5. See Doc. 13079, report on the follow-up to the issue of political prisoners in Azerbaijan.
6. See Doc. 12455, Resolution 1787 (2011).
7. See Recommendation 1897 (2010) on respect for media freedom, and Doc. 12102.
8. See Doc. 12957, Resolution 1891 (2012).
9. See Resolution 1416 (2005) and Recommendation 1690 (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference. See also Resolution 1525 (2006) on the establishment of a Stability Pact for the South Caucasus. The committee is now preparing a report on "The new parliamentary effort to create a stability pact in the Caucasus".
10. See Resolution 1497 (2006) and Recommendation 1877 (2009) "Europe's forgotten people: protecting the human rights of long-term displaced persons".
11. See Doc. 11769 on the observation of the presidential election in the Republic of Azerbaijan (15 October 2008); Doc. 11865 Part II, Appendix to the Progress report of the Bureau on the presence at the constitutional referendum in the Republic of Azerbaijan (18 March 2009); Doc. 12475 on the observation of the parliamentary elections in Azerbaijan (7 November 2010).
12. See Resolutions 1480 (2006) and 1505 (2006).

8. Finally, the honouring by Azerbaijan of its obligations and commitments is also monitored by the Committee of Ministers of the Council of Europe in the framework of the sub-group on Armenia and Azerbaijan of the Rapporteur Group on Democracy (GR-DEM), which, in December 2011, replaced the so-called "Ago Group". The sub-group takes stock of the progress achieved in each country every six months.

9. In the present report, we will use the findings and conclusions of the relevant institutions and monitoring mechanisms attached to the conventions of the Council of Europe to which Azerbaijan is a party. The work of the following bodies has been taken into account: the European Court of Human Rights, the Committee of Ministers in its supervisory function of the execution of the Court's judgments, the Commissioner for Human Rights, the Congress of Local and Regional Authorities of the Council of Europe, the Group of States against Corruption (GRECO), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Advisory Committee on the Framework Convention for the Protection of National Minorities and the European Commission against Racism and Intolerance (ECRI).

10. We have also taken advantage of the legal expertise of the European Commission for Democracy through Law (Venice Commission), and in particular of its conclusions with regard to the assessment of the compliance of a number of Azerbaijani laws with Council of Europe standards. During the reporting period, the Venice Commission delivered the following opinions: on the draft law on amendments and changes to the Electoral Code of the Republic of Azerbaijan (joint opinion with the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR));[13] on the draft amendments to the Constitution of the Republic of Azerbaijan;[14] on the draft law about obtaining information on activities of the courts of Azerbaijan;[15] on the draft law on additions to the law on the status of municipalities of the Republic of Azerbaijan;[16] on the compatibility with human rights standards of the legislation on non-governmental organisations;[17] and on the law on the freedom of religious belief.[18] We would like to take this opportunity to congratulate the Azerbaijani authorities for their constructive co-operation with the Venice Commission.

11. We were appointed as co-rapporteurs of the Monitoring Committee respectively in November 2009 for Mr Debono Grech in replacement of Ms Evguenia Jivkova (Bulgaria, SOC) who had left the Assembly, and in June 2010 for Mr Agramunt, in replacement of Mr Andres Herkel (Estonia, EPP/CD), whose mandate had expired. In the framework of the preparation of the present report and with a view to maintaining a political dialogue, we visited Azerbaijan on four occasions: in February 2011, in February 2012, in June 2012 and in November 2012. Following these visits, we submitted information notes[19] to the committee, which were subsequently declassified.

12. During our visits, we held a wide range of meetings, including, on the one hand, the highest representatives of the legislative, executive and judicial authorities, and, on the other, representatives of national and international civil society and leaders of the extra-parliamentary opposition.

13. The committee held a hearing on the freedom of expression in Azerbaijan following the publication of a report by Amnesty International on that subject in December 2011. We also regularly meet representatives of Azerbaijani non-governmental organisations (NGOs) present in Strasbourg during parliamentary sessions.

14. During the preparation of the present report, we were confronted with unprecedented pressure from a number of Azerbaijani non-governmental organisations which did not appear to understand the nature of parliamentary monitoring, based on political dialogue and a constructive approach. The sometimes unjustified and unfair criticism of our work and attempts to discredit us have not made our task any easier.

15. From the outset, we tried to structure our dialogue with the authorities in such a way as to achieve a common understanding of concerns and possible remedies with a view to improving the situation and making progress in the fulfilment by Azerbaijan of its obligations and commitments.

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13. See Opinion No. 390/2006.
14. See Opinion No. 518/2008.
15. See Opinion No. 548/2009.
16. See Opinion No. 559/2009.
17. See Opinion No. 636/2011.
18. See Opinion No. CDL(2012)066.
19. See documents AS/Mon (2011) 07 rev and AS/Mon (2012) 05 rev.

16. We wish to stress here that throughout the entire period of the preparation of the present report, co-operation with the Azerbaijani authorities and with the Azerbaijani parliamentary delegation to the Assembly was excellent, and we received all the necessary information and organisational support for our fact-finding visits.

17. The table illustrating the state of fulfilment of commitments undertaken by Azerbaijan upon accession is attached to the present report (see Appendix 1).

2. Geopolitical situation of the country

2.1. Regional and geopolitical context

18. Azerbaijan's political and security situation is to a large extent determined by the geopolitical context and can hardly be considered in isolation from it. The country is squeezed between the Russian Federation, Iran and Armenia.

19. Being a secular and multi-religious society, an overwhelming majority of the population of Azerbaijan is Muslim (over 97%) with a dominant Shiite branch of Islam. However, unlike most Muslim countries, Shiites and Sunnis often worship in the same mosques and there are no conflicts between them. The Azerbaijani government has managed so far to keep Islamic fundamentalism at bay and ensures that other religions can be freely practised. We looked closely at the question of religious freedoms and will come back to it in more detail in one of the following chapters.

20. Since its independence, Azerbaijani foreign policy has tried to find a balance in its relations with the European Union, Turkey, Iran and the other Caspian Sea neighbours, the Russian Federation and the United States. It has also friendly relations with Israel. The authorities have always declared their pro-European aspirations and pursued a policy of integration with Euro-Atlantic structures.

21. The Azerbaijani foreign policy agenda is dominated by the ongoing conflict with Armenia over Nagorno-Karabakh. We will deal with this question in the next chapter.

22. Azeri-Iranian relations have been influenced by several factors, such as a large Azeri ethnic minority of several million people in northern Iran, the recurrent fears of Islamic infiltrations through the southern border with Iran, and co-operation on energy. At the same time, they have been characterised by periodic tensions. A certain part of the political establishment in Iran even openly considers Azerbaijan as just a province of the Iran Islamic Republic. Well aware of this possible threat, and in particular the worry of losing their secularism in that geopolitical environment, the Azerbaijani authorities are obviously looking for strong political support from the European Union. On the other hand, they want to be the European Union's reliable modern and secular partner at the eastern boundaries of Europe.

23. The following incidents with Iran illustrate the problem well: on 19 January 2012, Azerbaijan's National Security Ministry (MNS) announced that it had uncovered a terrorist group that was plotting to assassinate public figures. According to the Ministry, two Azerbaijani citizens had brought firearms and explosives from Iran to Azerbaijan illegally and they had been in contact with the Iranian special services. They were detained by the Azeri security forces. The exposure of this plot has created an aggressive standoff.

24. On another occasion, Iran has accused Azerbaijan of allowing the safe passage of Israeli secret servicemen, who, it claims, were responsible for the latest two of a series of assassinations and attempts on the lives of Iranian nuclear scientists, which took place in January 2012. Azerbaijan has denied the accusation and the Azerbaijani Foreign Ministry spokesperson, Mr Elman Abdullayev, said that Iran's stance was an "absurd reaction" to Azerbaijan's protest over the alleged plot by Iranian agents to kill Israelis in Azerbaijan.

25. Azerbaijan has developed good relations with the United States. The visit in June 2012 by the US Secretary of State, Hillary Clinton, to Baku can be considered a confirmation of the importance that Azerbaijan has as a strategic ally in the region, both as an energy producer and for its proximity to Iran.

26. The Russian Federation also plays an important role in Azerbaijani foreign policy, including in the negotiations on the conflict over Nagorno-Karabakh. A considerable number of Azerbaijani nationals work and live in Russia.

27. In 2009, the authorities showed great concern about the improvement in relations between Armenia and Turkey, in the absence of a solution to the Nagorno-Karabakh issue. The establishment of diplomatic relations between both countries and the reopening of the border closed by Turkey in 1993 out of solidarity with Azerbaijan following the Nagorno-Karabakh conflict, were perceived in Azerbaijan as a threat to the region's stability.

28. Last but not least, Azerbaijan's rich oil and gas resources make this country a target and object of conflicting interests and policies. Azerbaijan, as described in a next chapter, is an important current and future supplier of both oil and natural gas, in particular to Europe. The conflicting claims over the maritime and seabed boundaries of the Caspian Sea between all countries having access to this sea, specifically between Azerbaijan and Iran, create a climate of continued uncertainty.[20]

2.2. Nagorno-Karabakh conflict

29. Upon accession, Azerbaijan committed itself to "continue efforts to settle the conflict by peaceful means only" and to "settle international and domestic disputes by peaceful means and according to the principles of international law (an obligation incumbent on all Council of Europe member States), resolutely rejecting any threatened use of force against its neighbours".

30. Since the cease-fire agreement in 1994, the negotiations on the Nagorno-Karabakh conflict have been conducted within the Minsk Group, co-chaired by France, the Russian Federation and the United States, but unfortunately, so far, they have led to no tangible results. The lack of real progress in the resolution of the conflict gives rise to strongly felt frustration within the government and public opinion. We noted that the international community, which is to be blamed for not fulfilling its own resolutions with regard to this conflict, is at the same time putting huge political pressure on Azerbaijan in some other fields.

31. Eighteen years after the cease-fire agreement, no peaceful solution has been found: about 20% of the Azerbaijani territory, including the Nagorno-Karabakh region and seven surrounding districts, remains occupied. Some 900 000 people, that is 10% of the country's population, remain displaced, putting a heavy burden on Azerbaijan's economic and social situation.[21]

32. During our visit in February 2012, we visited one of the refugee settlements in the suburbs of Baku and spoke to the State Secretary for Refugees and Displaced Persons, who gave us an exhaustive overview of the situation.

33. In the "Report of the OSCE Minsk Group Co-Chairs' Field Assessment Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh", published at the end of 2010, the co-chairs, referring to the disastrous humanitarian consequences which they could observe throughout the territories, stressed that "the harsh reality of the situation in the territories has reinforced the view of the Co-Chairs that the status quo is unacceptable, and that only a peaceful, negotiated settlement can bring the prospect of a better, more certain future to the people who used to live in the territories and those who live there now".[22]

34. Amidst increasing tension along the Line of Contact, mediation efforts have resulted in marginal progress in the investigation of the violation of the ceasefire agreement.

35. We have learnt that the conflict, which is termed "a frozen conflict", takes its toll of death and casualties on a daily basis. According to the information we received during our visits, every year approximately 30 people are killed and even more are injured. As one speaker put it, during discussion on Azerbaijan in the committee, "the country is not at war and not at peace".

36. The Parliamentary Assembly has tried to contribute to the peace process. In 2005, it adopted Resolution 1416 (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, in which it decided to actively contribute to the creation of a positive climate around the peace process without interfering with the negotiations. The Bureau of the Assembly established an ad hoc committee tasked with ensuring implementation the resolution, composed of the chairpersons of the national delegations of Armenia and Azerbaijan, the co-rapporteurs on both countries, representatives of political groups not represented by the above members and representatives of the main opposition party in each country. The late Lord Russell-Johnston was appointed Chairperson and later replaced by Mr Jordi Xuclà i Costa.

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20. Iran insists on an even one-fifth allocation of the Caspian Sea and challenges Azerbaijan's hydrocarbon exploration in disputed waters.
21. See Doc. 11196.
22. The text of the report is available on the OSCE website.

37. From the very beginning, and in particular following the death of its first chairperson, the work of the ad hoc committee has been hindered by the lack of co-operation from the Armenian side. Throughout 2011, the Armenian members refused to take part in the meetings.[23] The ad hoc committee has not yet been reconstituted in 2012, as the situation remains unchanged.

38. During our visits to Azerbaijan, we could observe a general political consensus on the conflict, and many of our interlocutors, including representatives of the civil society, have expressed their disappointment at the indifference and passivity of the international community, including in the Council of Europe. We have even heard accusations of applying double standards to different countries.

39. It is also quite worrying that the inefficiency of the international mediation results in more and more frequent hostile rhetoric and threats of the use of force in public statements. The budget increase for the army is another matter for serious concern. Since 2005, Azerbaijan's defence budget has been increased by 70%, including 45% between 2010 and 2011.[24] In 2011, arms spending amounted to US$3.1 billion out of a total US$15.9 billion State budget (19.47%).[25]

40. The failure to resolve this conflict, which affects the country's territorial integrity, has certainly impacted on the country's progress in all spheres. The continuing occupation of these territories and the presence of refugees and internally displaced persons (IDPs) remains an important challenge. Much of Azerbaijan's future democratic progress will depend on the success of a peaceful settlement of this conflict, which has so far held back Azerbaijan's internal development in the political, economic, institutional and social sectors

41. However, only a peaceful solution can be considered and Azerbaijan should step up efforts, together with Armenia, to reach agreement on the Madrid Principles, in accordance with the commitments made by the Presidents of Armenia and Azerbaijan in the framework of the Minsk Group. We noted, however, that the credibility of this format is more and more contested.

2.3. Relations with the European Union

42. Relations between Azerbaijan and the European Union are governed by the EU-Azerbaijan Partnership and Co-operation Agreement (PCA), signed in 1996 and in force since 1999. The main co-operation objectives and priorities are defined in the Country Strategy Paper 2007-2013.

43. Following enlargement in 2004, the European Union launched the European Neighbourhood Policy (ENP) and Azerbaijan is one of the five countries covered by this policy. The ENP sets ambitious objectives, based on mutual commitments of the European Union and Azerbaijan to common values, including the respect of and support for the sovereignty, territorial integrity and inviolability of internationally recognised borders, as well as democratic values.

44. In 2006, an ENP Action Plan was agreed; it was meant to "significantly advance the approximation of Azerbaijani legislation, norms and standards to those of the European Union" and set up priority areas, including contributing to a peaceful solution of the Nagorno-Karabakh conflict; strengthening democracy in the country, including through a fair and transparent electoral process, in line with international requirements; strengthening the protection of human rights and of fundamental freedoms and the rule of law, in compliance with the international commitments of Azerbaijan; the fight against corruption and economic integration. On several occasions, the Action Plan makes a direct reference to the work of the Council of Europe and our monitoring activities.[26]

45. The Action Plan expired on 31 December 2011, but both sides have agreed to an open-ended extension, until the Association Agreement, currently under negotiation, has been signed.

46. In 2007-2010, the European Neighbourhood Partnership Instrument envelope amounted to €88 million. The new National Indicative Programme for 2011-2013 has a budget of €122.5 million. This increase in budget shows an increased interest in enhanced co-operation. The programme aims at achieving the objectives and priorities of the Action Plan: democratic structures and good governance; socio-economic reform and sustainable development, trade and investment; partnership and co-operation in different areas including energy, mobility and security.

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23. See AS/Bur/AdhocNK (2011) 01.
24. International Crisis Group (ICG) Europe briefing paper No. 60 (February 2011).
25. Ibid.
26. See EU/Azerbaijani Action Plan.

47. Azerbaijan is actively participating in the Eastern Partnership (EaP), launched in 2009 and building upon the ENP. It is also a founding member of Euronest.

48. On 15 July 2010, negotiations were launched on an EU-Azerbaijan Association Agreement, which is meant to succeed the PCA. They are progressing at a slow pace. Once signed, the Agreement will cover a wide range of areas, including political dialogue, justice, freedom and security and economic co-operation, thus in a significant way deepening Azerbaijan's political and economic integration in the European Union.

49. This enhanced political dialogue is strictly linked to increased economic relations. Since 2004, the European Union has become the main trade partner of Azerbaijan. In 2010, trade with the European Union represented 42.5% for Azerbaijan.

50. Although Azerbaijan's share of overall European Union trade remains very low (less than 0.5%), it remains a major supplier of oil and gas to the European Union. Its special strategic importance is recognised in the EU-Azerbaijan memorandum of understanding on energy concluded in 2006.

51. Oil and gas from the Caspian Sea is shipped to the European Union through pipelines crossing Georgia and Turkey and through the Georgian ports of Poti and Batumi by rail. The plans foresee future shipping via a completed "southern corridor" which would include, *inter alia*, the Nabucco gas pipeline. The agreement for the construction of the Trans-Anatolian Gas Pipeline (TANAP), which could be an alternative to the Nabucco gas pipeline, foresees future shipping of gas to Europe via a "southern corridor".

2.4. Signature and ratification of Council of Europe conventions

52. As of 5 June 2012, Azerbaijan had signed and ratified 56 of the 213 Council of Europe conventions, including all but one of the legal instruments included in the list of commitments.

53. The only remaining convention on the list is the European Charter for Regional or Minority Languages (ETS No. 148), which was signed on 21 December 2001 but has not been ratified, despite the commitment to do so within one year of accession.

54. During our visit in February 2012, we were informed that the ratification process is underway, but is advancing at a slow pace. We imagine that the reluctance of the authorities may be linked to the fear that the implementation of the Charter may be misused by some radical groups in the areas close to the Iranian border.

55. In his biennial report on the application of the European Charter for Regional or Minority Languages[27] in 2012, the Secretary General invited the Azerbaijani authorities to take advantage of the legal assistance provided by the Council of Europe experts with a view to drawing up an instrument of ratification that takes full account of specific concerns that may exist in the country. During the April 2012 part-session of the Assembly in Strasbourg, we met the members of the Secretariat of the Charter, who provided us with useful information on the safeguards against abuse of the Charter's provisions. We hope that we will manage to convince the authorities to speed up the process of ratification and conclude it without further delay.

56. Finally, Azerbaijan has not yet signed the updated Money Laundering and Financing of Terrorism Convention (CETS No. 198). We were told that the process was also underway.

3. Economic and social situation

57. The Azerbaijani economy declined dramatically after the collapse of the Soviet Union and it only started to recover in the mid-1990s. After exceptionally rapid growth rates between 2001 and 2010, which averaged more than 16% during that period[28] and were largely driven by the oil exports, real gross domestic product (GDP) growth almost stalled at +0.1% in 2011.

58. Oil and gas remain key factors of the Azerbaijani economy, accounting for more than 40% of the GDP.[29] The high price of oil has been highly beneficial for the Azerbaijani economy. However, in 2011, the overall export of oil products dropped by 21.6%. According to official Azerbaijani sources, the fall in the oil and in the gas sector was due to repair work on some drilling platforms and refineries.

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27. See Doc. 12881.

28. Growth rates amounted to around 10% on an annual basis in the period 2000-2004, 26.4% in 2005 (second highest GDP growth in the world), over 36% in 2006 (world highest) and even 41.7% in the first quarter of 2007. Of course such a high rate cannot be sustained, and in 2008 it dropped to 11.6% and dropped further to 9.3% in 2009, 5% in 2010 and 0.1% in 2011.

59. Azerbaijan is considered to be one of the most important areas in the world for oil and gas exploration and development. Proven oil reserves in the Caspian Basin, which the country shares with Russia, Kazakhstan, Iran and Turkmenistan, are estimated at 7 billion barrels,[30] which is comparable in size to the North Sea reserves.

60. The European Union is the main consumer of the Azerbaijani hydrocarbons, accounting for almost 50% of its export.

61. Azerbaijan has concluded a number of production-sharing agreements with various oil companies. The State Oil Company of Azerbaijan Republic (SOCAR) produces less than 20% of Azerbaijan's total output, the remaining 80% being produced by the BP-led Azerbaijan International Operating Company (AIOC).[31] More than US$60 billion have been invested in Azerbaijan's oil extraction, production and transportation by major international oil companies. In 2006, the pipeline transporting Caspian oil to the Mediterranean, via Georgia and Turkey, became operational (BTS pipeline). It carries approximately 80% of Azerbaijani oil export, with two other pipelines (Baku-Novorossiysk on the Black Sea in Russia and Baku-Supsa on the Black Sea in Georgia) sharing the remaining 20%. The "southern corridor", including the Nabucco pipeline, is under construction. As mentioned above, there is also the agreement on the Trans-Anatolian Gas Pipeline, ratified by the Azerbaijani Parliament on 20 November 2012.

62. Azerbaijan has made considerable efforts to modernise and reform its economy. The government has undertaken regulatory reforms in a number of areas, including a substantial opening of trade policy, but inefficient public administration limits the impact of these reforms. The government has largely completed the privatisation of agricultural lands and small and medium-sized enterprises. However, the State continues to play a very important role in industry and there is still much to be done to further develop the economy, including the improvement of tax and customs administrations and the strengthening of the fight against corruption.

63. The dominant role of public spending in non-oil growth and the weak role of external trade are sources of concern. Other concerns include: the relatively high rate of youth unemployment and weaknesses in the environment for investors, including small and medium-sized enterprises (in particular corruption, budget transparency and governance).

64. The main challenge for the Azerbaijani economy remains sustaining this growth, in particular through diversification, for example development of the non-oil sectors. Further structural reforms are necessary to boost private sector development by improving economic governance and opening up competition.[32]

65. Azerbaijan applied for membership of the World Trade Organization (WTO) in 1997 and is still in the process of negotiations, which advance at a slow pace. The earliest possible date for accession is 2013.

66. Despite the economic slowdown, Azerbaijan has maintained macroeconomic stability, continued to reduce poverty and encouraged diversification of the economy. According to the World Bank, Azerbaijan has achieved a remarkable success in reducing poverty from 49% in 2001 to about 9% in 2010. This achievement is even more impressive considering that an estimated one in nine persons in Azerbaijan is internally displaced by the Nagorno-Karabakh conflict. The poverty reduction record is also remarkable when compared to other countries, including those in the region.

67. Inequality also declined, with the Gini index falling by nearly 8% to 34% in 2008. In 2010, the mean income difference between cities and rural areas was relatively small, with indices between 33% and 27% respectively.[33]

68. The government is currently putting into practice an Action Plan (2011-2015) on the implementation of the State Programme on Poverty Reduction and Sustainable Development.

69. The unemployment rate remains relatively low and was 5.5% in 2011. There has been a substantial increase in real wages.

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29. 10% in 2005, 20% in 2007.
30. *Oil and Gas Journal*, January 2012.
31. AIOC is a consortium of 10 petroleum companies that have signed extraction contracts with Azerbaijan; it is led by BP and includes Chevron, Statoil, Turkiye Petrolleri, ExxonMobil and SOCAR.
32. See IMF Country report, No. 12/6, January 2012.
33. Ibid.

70. In 2005, the President signed a National Employment Strategy for 2006-2013, drawn up in co-operation with the International Labour Organization (ILO), and focusing in particular on vocational education and training, development of small and medium-sized enterprises and social protection.

71. But much still remains to be done. Access to essential health facilities, particularly for the poorest part of the population, remains a cause for concern. Azerbaijan's rank in the Human Development Index (HDI), which comprises health, education and income, is still below the comparator countries in Europe and Central Asia. The World Bank and the Organisation for Economic Co-operation and Development (OECD) assessments point to inequities in access to education and health.

4. Political situation

72. The reporting period was marked by the presidential election of October 2008 and the parliamentary elections of November 2010, as well as the constitutional reform following the referendum of March 2009 on the amendments and the additions to the Constitution. The municipal elections were held in December 2009.

73. Out of seven presidential candidates registered by the Central Electoral Commission, the incumbent President, Mr Ilham Aliev, supported by the ruling party, won the election with 88.73% of the votes cast, with a voter turnout of 75.64%. The ad hoc committee of the Parliamentary Assembly that observed the elections concluded that the results of the election held on 15 October 2008, despite of a number of shortcomings, "reflected the will of the country's electorate".[34]

74. The parliamentary elections of 7 November 2010 resulted in a majority for the ruling party, the New Azerbaijan Party (YAP), which won 71 seats (out of 125). Independent candidates won 42 seats, the Party of Citizens' Solidarity won three seats, the Ana Vatan Party won two seats, UMID, Citizens' Union, Adalat, the Party of Democratic Reforms, the Party of United Popular Front, the Social Well-Being, and the Party of Great Construction won one seat each. The voter turnout was 49.56%. In their joint statement, the observers from the Parliamentary Assembly of the Council of Europe, the OSCE Parliamentary Assembly, the European Parliament and the OSCE/ODIHR concluded that "the process overall was not sufficient to constitute meaningful progress in democratic development".[35]

75. The constitutional amendments of 2009, while introducing some positive modifications, such as 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, as well as the extension of the right of legislative initiative to 40 000 citizens, also raised a number of concerns.

76. As a new rule, the possibility of unlimited re-election of the president gives rise to concern.[36] Moreover, explicit constitutional limitations on the successive terms of a president are particularly important in countries where democratic structures and a political culture have not yet been consolidated. The criticism made during successive elections further contributes to that concern.

77. Other issues of major concern relating to the constitutional amendments introduced in 2009 include the extension of the term of the Milli Mejlis (Parliament of Azerbaijan) and the president in case of military operations, the modifications with regard to local government bodies, in breach of the European Charter of Local Self-Government (ETS No. 122),[37] and restrictions imposed on media freedom.

78. It is to be noted that the authorities had not sought the Venice Commission's opinion on the proposed amendments prior to the referendum, despite their considerable impact on the functioning of democratic institutions. The request for an opinion was made at the end of January 2009 by the Monitoring Committee and the Secretary General of the Council of Europe. However, the opinion was only adopted in March 2009, a few days before the referendum and was not taken into consideration by the Azerbaijani authorities.[38]

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34. See Doc. 11769.
35. See Doc. 12475.
36. 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, CDL-AD(2009)10.
37. 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").
38. The Venice Commission concluded that "[s]ome amendments, undoubtedly, constitute important improvements as compared to the existing Constitution and they must be welcomed. At the same time, there is reason for concern about a few very negative developments in terms of democratic practice, given the context prevailing in Azerbaijan. This is essentially the case for the removal of the two-term limit of the President, which reinforces his already strong position and does not follow European practice".

79. In the referendum on the amendments, held on 18 March 2009, the turnout was 70.83%. The 41 amendments, presented in 29 questions, were accepted, with the percentage of "Yes" votes varying between 87.15 and 91.76%. The Parliamentary Assembly sent a delegation to be present during the referendum.

80. The municipal elections were observed by a delegation of the Council of Europe Congress of Local and Regional Authorities, which considered them as "being symptomatic of the still unsatisfactory situation of local democracy and – more generally – of the weakness of local governments in Azerbaijan".[39]

81. Since the 2005 parliamentary elections, the relations between the authorities and the opposition have remained tense, with almost no dialogue between the two sides. Despite the participation of the opposition at the 2005 elections, some of the opposition parties decided not to participate in the next electoral race, citing obstacles to equal opportunities, and those which took part withdrew in protest from the partial repeat parliamentary elections in 10 constituencies in May 2006 and in the October 2008 presidential election. Following the 2005 elections, the ruling party (New Azerbaijan Party – YAP) held 64 out of the 125 seats and 45 seats were won by deputies elected as independent candidates, who usually support the ruling party, but sometimes are critical towards the authorities. The opposition party Musavat had four deputies in the parliament. Some opposition parties, including the Azerbaijan Popular Front Party, refused to take up their seats in the parliament.

82. In the course of the 2010 elections, the opposition did not manage to unite and was very fragmented (five blocs and two parties) and, as a result, very few opposition candidates won seats (we will come back to the question of elections in the chapter entitled "Functioning of pluralist democracy").

83. The lack of substantial political dialogue has unfortunately been aggravated by the deterioration of the political environment. We have been concerned by the reports on restrictions on freedom of expression and assembly and human rights abuses, including harassment and violence against journalists, human rights defenders, lawyers and activists. These concerns are also developed in the following chapters.

84. The dispersion by disproportionate force of the protest demonstrations, which took place in Baku in March and April 2011, and the detention of participants, has raised justified concern. Fifteen people, who were sentenced to between two and three years in prison for hooliganism on that occasion, have been considered by Amnesty International as prisoners of conscience. Fortunately, all of them have now been released either by Court decisions or by presidential pardons. We will come back to this question in the broader context of the restrictive use of the Criminal Code and the independence of the judiciary, in the chapter entitled "The rule of law". Also, we will continue to follow up all individual cases of alleged political prisoners in our future fact-finding visits and reports.

85. In May 2012, the international spotlight fell on Azerbaijan as it hosted the 2012 Eurovision Song Contest. Azerbaijani activists used this opportunity to focus the world's attention on the authorities' human rights abuses, supported by Amnesty International, launching a campaign entitled "Sing for Democracy".

86. In all our contacts with the highest authorities, we have stressed our deep conviction that it is in the best interests of the entire democratic process, and indeed the ruling party itself, to confront the real opposition in a representative body and establish a truly meaningful political dialogue within the parliamentary framework.

87. We have also insisted that critical views cannot be suppressed by limiting the freedoms of expression and assembly.

5. Functioning of pluralist democracy

5.1. Free and fair elections

88. Since Azerbaijan's accession to the Council of Europe in 2001, two presidential elections (in 2003 and 2008) and two parliamentary elections (in 2005, followed by a partial re-run in 2006, and in 2010) have been held. All of them were observed by the Assembly.[40] Regrettably, none of these ballots fully met democratic standards.

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39. See document CPL(18)2.

40. See the Assembly reports on the observation missions to 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), Doc. 11769 (2008 presidential elections), and Doc. 12475 (2010 parliamentary elections).

89. The elections in 2005 even gave rise to the credentials of the Azeri delegation being challenged on substantial grounds in the Parliamentary Assembly,[41] and led to the partial re-run elections in 2006.

90. Recently, the European Court of Human Rights has delivered judgments in seven cases (out of 35 considered admissible) relating to the 2005 parliamentary elections in Azerbaijan, where it found a violation of Article 3 of Protocol No. 1 (right to free elections).[42] Five of them concerned complaints about the arbitrary invalidation of election results in the applicants' electoral constituency depriving them of their victory, submitted, *inter alia*, by the leaders of the opposition parties. Another one concerned a complaint about an arbitrary and ineffective examination of the applicant's complaints about election irregularities. Seven other similar applications were struck out by the Court after this judgment, based on an unilateral declaration by the government acknowledging the violations. The last judgment concerned the arbitrary refusal to register the applicant as a candidate for parliamentary elections.

91. During the reporting period, as already mentioned, one presidential and one parliamentary election took place. In 2008, the presidential election was observed by international observers from the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the Parliamentary Assembly of the Council of Europe and the European Parliament.[43] In a joint statement, they concluded that the "presidential election in Azerbaijan marked considerable progress, but did not meet all the country's international commitments" and "additional efforts are necessary to meet crucial international commitments, especially those related to pluralism, the fairness of the campaign environment, and the media". The observers noted that five opposition parties had boycotted the election, citing long-standing obstacles to equal opportunities.

92. In its conclusions, the ad hoc committee pointed to a number of shortcomings and deficiencies in the electoral process, in particular with regard to the Election Code, the composition of electoral commissions, the media environment, and the restrictive implementation of the law on freedom of assembly.

93. Upon accession, Azerbaijan undertook to "revise legislation on elections, particularly the Law on the Central Electoral Commission and the Electoral Law, taking account of the recommendation put forward by the international observers during previous elections, so that the next general elections in autumn 2000 can confirm definitively the progress made and their results can be accepted by the majority of the political parties that will participate in the elections, and can be considered as free and fair by international observers".

94. The Azerbaijani authorities requested the Venice Commission's expertise for the reform of the Electoral Code just before the partial elections of May 2006. The consultations continued until 2008, and the law on amendments to the Electoral Code was passed by the parliament in June 2008. In its opinion on these amendments,[44] the Venice Commission pointed out that "some previous recommendations are not addressed in the amendments or are addressed only to a limited degree". The biggest concerns were raised by 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 procedure.

95. In two consecutive resolutions on the functioning of democratic institutions in Azerbaijan, adopted in 2008 and 2010, the Assembly called on the authorities to ensure the necessary conditions for full compliance of the November 2010 elections with European standards, and in particular, to co-operate with the Venice Commission with a view to revising the outstanding issues in the Electoral Code, namely those mentioned at the end of the preceding paragraph.

96. Both resolutions also called for the establishment of conditions for a fair electoral campaign, in particular through full implementation in practice of the law on freedom of assembly and by ensuring media freedom.

97. These outstanding concerns were not fully addressed in time for the November 2010 parliamentary elections, which, according to the assessment of the international observers including those from the Parliamentary Assembly, "were not sufficient to constitute meaningful progress in the democratic development of the country". The observers were particularly concerned by the "limitations of media freedom and freedom of assembly, and a deficient candidate registration process". They also stressed that "a restricted competitive environment created an uneven playing field for candidates, making it difficult for voters to make an informed

41. See Doc. 10807.
42. *Kerimova v. Azerbaijan* (30 September 2010); *Namat Aliev v. Azerbaijan* (8 April 2010); *Seyidzade v. Azerbaijan* (8 April 2010); *Kerimli v. Azerbaijan* (10 January 2012); *Hajili v. Azerbaijan* (10 January 2012); *Alibeyli v. Azerbaijan* (10 January 2012); *Jalaloglu v. Azerbaijan* (10 January 2012).
43. See Doc. 11769.
44. 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, CDL-AD(2008)11/Opinion No. 390/2006.

choice". Furthermore, they raised other concerns such as "credible allegations of intimidation of voters and candidates as well as abuse of administrative resources", ineffective legal remedies against decisions on election-related complaints and unbalanced media coverage. The observers regretted that the recommendations included in the Venice Commission's opinion of 2008 had not been addressed.

98. Unfortunately, until now, several of the concerns raised during previous elections have remained unaddressed. The next presidential election is due to take place in mid-2013. During our visits, we stressed the importance of the revision of the Electoral Code with a view to ensuring its compliance with European standards, as outlined in the Venice Commission's recommendations. We hope that this will be done in time for the forthcoming election.

5.2. Party pluralism

99. There is a variety of registered political parties in Azerbaijan, many of them critical towards the authorities. However, following the November 2010 elections, several opposition parties did not win any seats in the parliament. As already mentioned, the ruling party obtained 71 out of 125 seats, the other mandates being won by 45 independent candidates and by single representatives of other parties who in general support the ruling party. This does not preclude their often critical approach to governmental policies.

100. Some opposition parties, including the Musavat Party and the Popular Front Party, contested the result of the last parliamentary elections. On the other hand, the authorities drew our attention to the fragmentation of the opposition which, in their view, contributed to their defeat.

101. In our opinion, the absence of any political dialogue between the authorities and the major opposition parties is highly unsatisfactory. We raised this question during all our visits. The authorities insisted that the lack of dialogue is due to the unconstructive approach of the extra-parliamentary opposition.

102. However, during our meetings, the representatives of the extra-parliamentary opposition complained about the continuing restrictive climate for their activities. They raised the question of the limitations imposed on freedom of expression and freedom of assembly, lack of access to public TV, and in some cases, according to them, there was intimidation, harassment and even persecution of members and supporters (we develop these questions in the following chapters). They referred to the above-mentioned judgments of the European Court of Human Rights regarding violations during the 2005 elections and a number of cases pending before the Court relating to the 2010 elections.

103. They also raised concerns about the funding of political parties[45] and serious problems relating to logistical facilities, including difficulties to rent premises for their headquarters and locations for regional branches.

104. Following their defeat in the 2010 elections, on 28 December 2010, candidates from the main extra-parliamentary opposition parties created a new Civic Movement for Democracy, the so-called "Public Chamber". This major opposition bloc includes the leaders of the Musavat and the Azerbaijan Popular Front Party, as well as leaders of eight other political parties and representatives of civil society. The declared objective of the Public Chamber is to promote democratisation and alternative solutions to the country's concerns. In a statement published following its session in January 2012, the Public Chamber set the main targets for its action: ensuring human rights and freedom of assembly and creating conditions for elections which would fully comply with democratic standards.

105. The Public Chamber does not regroup the entire extra-parliamentary opposition. On 12 January 2012, representatives of five extra-parliamentary opposition parties (the Classical Popular Front Party, Aydinlar, the Open Society, the Liberal Democratic Party and Azadliq) created a new Resistance Movement for a Democratic Society. Its declared objective is to reform election legislation and create conditions for holding elections that comply with democratic standards, to combat corruption and to find a solution to the Nagorno-Karabakh question.

106. The new movement is ready to co-operate with the Public Chamber and both blocs are currently negotiating possible unification. However, there are differences concerning the assessment of the situation and the strategy to be adopted.

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45. The standards of transparency in funding of political parties are set out in Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.

107. With regard to party pluralism, we would like to refer here to the amendments to the 2004 Law on Political Parties, which were recently adopted by the parliament. In December 2011, the Venice Commission adopted its opinion on these amendments at the request of the government.[46] We wish to express here our satisfaction that the government decided to seek the Venice Commission's expertise, but we regret that it did not take into account all the recommendations.

108. The Venice Commission had already provided an opinion and identified a number of concerns in the original law on political parties in 2004. Unfortunately, the proposed amendments did not address the identified shortcomings identified.

109. In particular, the question of the transparency of funding and spending of parties' funds and private donations, already raised by the Venice Commission in its opinion in 2004, has not been addressed in the draft amendments. And yet this is a major concern, which may lead to corruption and creates unfair conditions for party competition. More generally, party financing remains a problem and results in an uneven playing field, which to a large extent hinders the opposition parties' chances for a fair competition.

110. While not addressing earlier concerns, some of the proposed amendments introduce new regulations which have been criticised in the Venice Commission's opinion. So far, it is also still not clear which body would be responsible for possible dissolution of parties not complying with the law, and the impartiality and independence of this body should be guaranteed.[47] On the other hand, we express here our satisfaction that, following the recommendation of the Venice Commission, the provision increasing the number of members required for party registration from 1 000 to 5 000 was dropped in the final text.

111. The creation of an inclusive political system and an environment favouring the establishment of political pluralism is particularly important in view of the forthcoming presidential election, scheduled for 2013. There is still time to address a number of concerns raised on many occasions by the opposition and civil society as well as by the international community, including the Parliamentary Assembly and other bodies of the Council of Europe, including with regard to the Electoral Code.

112. Furthermore, the outstanding concerns relating to limitations on freedoms and to human rights abuses, which we will look at in the next chapter, should be addressed so as to create a truly competitive and unrestrictive political environment promoting party pluralism.

113. Once again, we would like to stress here our deep conviction that it is in the best interests of the democratic process and the ruling party itself to confront the opposition in a representative body and establish a truly meaningful political dialogue within the parliamentary framework.

5.3. Separation of powers and checks and balances system

114. Upon accession, the authorities of Azerbaijan undertook to "continue reforms aimed at strengthening the independence of the legislature vis-à-vis the executive, so that the former can exercise the right to put parliamentary questions to members of the government".

115. The Constitution of Azerbaijan, adopted in 1995, provides for a strong presidential system, which was further strengthened by the constitutional amendments introduced in 2002 and 2009. All our predecessors in their monitoring reports have drawn attention to the need for increasing parliamentary control of the executive in order to guarantee checks and balances.

116. With a view to fulfilling this commitment, and providing a mechanism allowing the legislature to put questions to the members of the government, a Constitutional Law "on additional safeguards to the right of the Milli Mejlis to address the issue of confidence to the Cabinet of Ministers" was adopted in 2001.

117. However, according to the opinion of the Venice Commission,[48] this law did not introduce any changes to the political system of Azerbaijan. It provided for a mechanism whereby the parliament is able to exercise, by means of a "recommendatory" vote of no confidence, some control over the executive. Any substantial strengthening of parliamentary control would require a revision of the constitution by referendum. In other words, the law in question set out the framework of a mechanism which still needs to be introduced. Unfortunately, this was not done during the referendum on constitutional amendments in 2009.

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46. See Opinion No. 631/2011.
47. In their comments to the present report, the Azerbaijani authorities informed us that, according to the Presidential Decree of 8 May 2012 on measures to ensure application of the Law of 20 April 2012, the dissolution of a party can be made by decision of the Court on the basis of an application filed by the Ministry of Justice.
48. CDL-INF(2001)26.

118. The main weakness of the parliament is that there is no real opposition. As we mentioned before, some opposition parties remain outside the elected body and those which are inside are perceived as supporting the ruling party in most cases. This often unjustified perception is strengthened by the limits imposed on the possibilities for parliamentary action by individual members in the present internal rules of the Milli Mejlis (Parliament of Azerbaijan).

119. According to these rules, the establishment of a parliamentary faction requires at least 25 members of parliament (20% of 125). In most Council of Europe member States, this figure is 3% to 5%. Such a high percentage seems to be particularly inappropriate in a parliament in which the opposition is so fragmented! Indeed, those deputies who are not members of the ruling party are either independent or single representatives of different parties. As a result, there is only one parliamentary faction, that of the ruling party. And yet, individual deputies' possibilities for parliamentary action are extremely limited as compared to those associated to the membership of a faction. Indeed, individual members are deprived of many important rights indispensable for the proper carrying out of their tasks.

120. The need for revision of the internal rules of procedure of the Milli Mejlis was already raised in the 2007 report on the fulfilment of obligations and commitments by Azerbaijan; it was also pointed out by our interlocutors, non-members of the ruling party, at the meeting in the parliament. We fully share this opinion and we believe that increasing of the role of individual members, and decreasing the number required for establishment of a faction, would significantly contribute to strengthening the role of the parliament.

121. Much remains to be done to strengthen parliamentary control of the executive and improve checks and balances in a State with a strong presidential system. As did all our predecessors, we stress that it is 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.

122. The question of the independence of the judiciary is another matter for concern. We examine this question in a separate chapter.

5.4. Local and regional democracy

123. Upon accession, Azerbaijan committed itself to “sign and ratify, within one year of its accession, the European Charter of Local Self-Government”. The charter was ratified in 2002, and since then, Azerbaijan is subject to the monitoring procedure of the Congress for Local and Regional Authorities of the Council of Europe (the Congress).

124. The most recent monitoring report of the Congress was presented in October 2012.[49] In their conclusions, the rapporteurs regretted that Azerbaijan had made no real progress in the implementation of the charter since the recommendations made by the Congress in 2003. They stressed that the country was failing to comply with some major principles and requirements of the charter. The concerns raised in the 2003 monitoring report had not been addressed.

125. The situation has even deteriorated following the adoption of the amendments to the Constitution of the Republic of Azerbaijan in 2009, and in particular a new Article 146 on self-government, as confirmed by the opinion on the draft amendments of the Venice Commission[50] and the statements by the President of the Congress quoted above.[51]

126. The authorities must undertake complex reforms aimed at administrative and financial decentralisation in order to develop local self-governance. The Congress, in its recent report, pointed to numerous concerns, including the ambiguous and insufficient definition of local self-government. It is important that municipalities be recognised by the legislation as State institutions that exercise public power as part of the overall public administration, in line with the European Charter of Local Self-Government.

127. The unclear division of responsibilities between municipalities and local State bodies results in conflicts and undue interference in the activities of the municipalities. The existing de facto hierarchical relationship between the local executive bodies directly subordinate to the central governmental authorities and the elected municipalities, does not comply with European democratic standards and the Charter. The Law on the

49. Document CG(23)12. See also Congress Resolution 345 (2012) and Recommendation 326 (2012).
50. See Opinion No. 518/2008.
51. See footnote 16.

Status of Municipalities should be revised with a view to defining a clear repartition of tasks and powers between the parallel centralised system of the State administration under the President of the Republic and the municipalities.

128. Furthermore, the transparency of local government mergers, with the involvement of the municipalities concerned and in full compliance with the Charter and the mechanisms of consultation foreseen therein, should be ensured.

129. The draft law on additions to the law on the status of municipalities of the Republic of Azerbaijan, submitted by the Azerbaijani authorities to the Venice Commission in 2010, did not address these concerns, as was confirmed by the opinion of the Venice Commission on the draft law.[52] Since then, the law has not been amended.

130. It is important that the authorities undertake effective measures aimed at capacity-building and training programmes for members of municipal staff, in order to increase the quality of their daily work.

131. The recommendation,[53] adopted by the Congress following the debate on the above-mentioned report, includes a number of measures which should be undertaken by the Azerbaijani authorities with a view to making progress in implementation of the European Charter of Local Self-Government. We hope that the authorities will address all the concerns raised by the Congress.

132. Upon accession, Azerbaijan undertook to "amend, before the next local elections, the current legislation governing the powers of local authorities so as to give them greater responsibilities and independence, taking into account the recommendations made in this respect by the Congress for Local and Regional Authorities (CLRAE)".

133. The Election Code, adopted in 2003 and amended in 2008 and 2009, establishes the rules for the organisation and the conduct of elections of all elected organs including the municipalities. As already mentioned, following the request from the Azerbaijani authorities, the Venice Commission adopted an opinion on the amendments to the Electoral Code just after their adoption in 2008. The concerns expressed in this opinion fully apply to the municipal elections.

134. This was confirmed, as mentioned in one of the previous chapters, by the conclusions of the delegation of the Congress which observed the municipal elections in 2009.[54]

135. Furthermore, the observers pointed to three major matters of concern: the lack of a truly pluralistic party landscape, the scarcity of real opposition candidates and, as a consequence, the absence of a competitive election campaign; the questionable nature of the registration process and the vote counting; and the underdevelopment of territorial democracy in Azerbaijan.

6. Rule of law

6.1. Judiciary

136. The Azerbaijani authorities have been co-operating closely with the Council of Europe on judicial reform since 2000. The parliament has adopted a number of laws aimed at ensuring greater independence of judges and improving legal procedures, including the Law on the Bar and on Judges (The Court and Judges Act), as specified in the list of commitments undertaken upon accession.

137. Among the relevant laws, the establishment of the Judicial Legal Council in 2005 constituted a major step towards ensuring the smooth functioning of the judicial system. Furthermore, the newly adopted legislation provided for a revised recruitment procedure for judges, establishing a fair and transparent selection procedure, drawn up in co-operation with the Council of Europe.[55] Moreover, it extended to judges

52. See Opinion No. 390/2006.
53. See footnote 49.
54. See the Congress report on the observation of the municipal elections, CPL(18)2.
55. In their comments, the authorities drew our attention to the assessment of the procedure for the selection of judges made by the European Commission for the Efficiency of Justice (CEPEJ), which concluded that "the model developed by the Azerbaijani authorities for the selection of new judges can be regarded as an interesting example of best practice that reflects the particular features and the course of development towards ensuring the independence and quality of the judiciary in a new democracy" (see document CEPEJ-COP(2011)1).

the financial requirements set forth in the 2004 Law on Combating Corruption, including the submission of tax returns and restrictions on gifts. A channel for individuals and legal persons to complain about judicial corruption was also created and training programmes for candidates for the judiciary have been established.

138. The authorities have also assured substantial investment in new facilities, infrastructure and capacity-building.[56]

139. In February 2009, the President issued a decree establishing the 2009-2013 State Programme on Development of the Justice System. The programme's objectives included improving legislation and the quality of professional staff training.

140. However, the undeniable progress made in the establishment of a legislative framework must be backed by effective and systematic implementation of the adopted laws. The lack of independence of the justice system remains of serious concern in Azerbaijan.

141. The independence of the judiciary is one of the basic preconditions for the democratic principles of the separation of powers and systems of checks and balances. In our opinion, the authorities in Azerbaijan should increase their efforts to ensure full independence of the judiciary, including vis-à-vis the executive. In Azerbaijan, the executive branch continues to exert influence on the judiciary, thus contributing to the continuation of the problem. Our visit to the country in June 2012 focused on this issue.

142. According to Council of Europe standards, the independence of the judiciary and of individual judges should be safeguarded by a judicial self-governing body. It is of crucial importance that the composition, selection of its members and the functions of this body comply with democratic standards, thus ensuring its full independence and impartiality.

143. Such a body, called the Judicial Legal Council, was established in Azerbaijan, as mentioned above, in 2005. However, it is not tasked with ensuring and implementing judicial independence. The Constitution of Azerbaijan designates the President of the country as the main guarantor of judicial independence. It would appear problematic in any country to rely upon a single person, instead of an independent institution, to ensure the independence of the judiciary.

144. The Judicial Legal Council Act, adopted by the parliament in 2005, as indicated above, does not include ensuring and implementing judicial independence among the Council's functions. Its fields of competence include the organisation and operation of the court system, including the selection, evaluation and promotion of judges, as well as initiation of disciplinary proceedings against them, their assignment to different posts, and, more generally, the implementation of the self-governing of the judiciary. In our opinion, in order to strengthen and safeguard judicial independence, Azerbaijan should revise the constitution and the Judicial Legal Council Act with a view to enshrining the main function of the Judicial Legal Council in Azerbaijan.

145. In order to fulfil this main task properly, the Judicial Legal Council, as mentioned above, must be fully independent. According to Council of Europe standards, it should be composed either exclusively of judges or of a substantial majority of judges elected by their peers. The Judicial Legal Council of Azerbaijan is composed of 15 members, among whom judges constitute the majority, the others being representatives of executive and legislative bodies, the Prosecutor's office, and the Bar Association.

146. While the composition of the Judicial Legal Council complies on paper with the relevant European standards, the appointment procedure is more problematic. Appointments are made on the basis of a recommendation of the General Assembly of Judges. However, of crucial importance is that the General Assembly must always recommend at least two candidates for one post and the final appointment, depending on the post, is made by various bodies, including the Minister of Justice, the Constitutional Court and the Supreme Court of Justice.

147. This means that the selection procedure for the majority of the members of the Council involves not only the judges electing their peers, but also the executive. This procedure does not comply with Council of Europe standards and should be revised. We recommend that the Judicial Legal Council Act is amended with a view to streamlining the procedure of selection and appointment of members of the Council and transferring the right to directly select and elects Council members to the General Assembly of Judges.

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56. The financial sources from the State budget allocated to the functioning of justice tripled between 2006 and 2008 from €10 million to over €30 million.

148. The influence of the executive over the self-governance of the judiciary is further increased by the fact that the Council is, to a very limited extent, involved in the courts' budget drafting process, which is not in line with European best practices. The Judicial Legal Council Act should give more powers to the Council over its own budget.[57]

149. The manner of selection, appointment and promotion of judges is also of crucial importance to securing the independence of the judiciary. The whole procedure should be free from any political influence and therefore the role of the legislature and the executive should be limited in the entire process. Regrettably, the current practice in this respect in Azerbaijan is not in line with European standards, due to the decision-making power of the President over the appointment of judges enshrined in the constitution, the Judicial Legal Council Act and the Courts and Judges Act. We strongly recommend that the relevant legislation be revised, with a view to increasing the role of the Judicial Legal Council in the appointment process by upgrading it from a recommending body to a decision-making body. Furthermore, we recommend that the law provides for the establishment of criteria for judicial promotion, inexistent at the moment.[58]

150. In order to ensure the judges' independence and eliminate any possible influence on them, the duration of the terms of office of judges should be fixed for all and be made permanent. In Azerbaijan, however, the legal regulation allows for the extension of judicial tenure for some judges from the age of 65 to the age of 70. The retirement age should be the same and mandatory for all. Case-by-case decisions by the Judicial Legal Council increase the risk of undue influence.

151. On the other hand, tenure should be guaranteed until a mandatory age of retirement. The existence of exceptions to guarantee of tenure, particularly those deriving from disciplinary sanctions, should be limited to the most serious cases and clearly defined. Regrettably, the grounds for terminating judicial powers, as specified in the law, are unclear and inconsistent. Among the reasons for terminating a judge's office, there are: engaging in activities not compatible with the position, a gross infringement or multiple infringements of the requirements of legislation in the course of considering cases and inability to fulfil the duties following an opinion issued by a medical commission. These reasons are vague and leave too much room for interpretation. We recommend that the legislation in this respect be revised in order to fully comply with Council of Europe standards.[59]

152. The concern raised in the previous paragraph can also be applied to disciplinary procedures. Whereas the fact that only the Judicial Legal Council is competent to initiate the procedure is in line with European standards, again, some of the grounds for opening a procedure are not clear enough and might be open to abuse. Taking into account our previous concerns with regard to the composition of the Legal Judicial Council, we believe that there is a risk of undue influence. The whole procedure should be more transparent.[60]

153. The question of the fairness of trials was raised on several occasions during our meetings with civil society and it is also of concern to the international community. The OSCE systematically monitors the most sensitive trials and their most recent report,[61] as well as exhaustive information provided to us during our meeting in Baku, was very useful.

154. Already the pre-trial stage is sometimes marked by irregularities, such as arrest without an appropriate warrant, pre-trial hearings behind closed doors, denial of timely access to legal counsel or denial of a lawyer of the defendants' choice, extension of pre-trial detention without providing the necessary justification as required by the Azerbaijani law.

155. Inequality of arms during the trial is another serious concern. There have been reports by defence lawyers claiming that they were denied the opportunity of challenging conflicting or inaccurate testimonies or arguments presented by the prosecution as incriminating evidence, or presenting evidence of their own and calling on a number of key witnesses.

156. Other reported deficiencies of court procedures include alleged refusal of the judge to enable the defence to examine the evidence used against the defendant (for example, requests by defence lawyers in the trial of participants in the April demonstrations that concluded on 25 August 2011, to have available video footage presented in court to demonstrate and analyse the alleged criminal actions of defendants during the protests have not been granted), and convictions without convincing evidence.

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57. The authorities observed in their comments that this procedure complies with provisions of Committee of Ministers Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities.
58. See footnote 55.
59. Ibid.
60. Ibid.
61. Trial Monitoring Report Azerbaijan 2010, OSCE Office in Baku, available at the OSCE website.

157. In more general terms, it is a matter of concern that, as in some other countries with a Soviet legacy, in many cases courts seem to be an extension of the prosecutor's office. This is evidenced, *inter alia*, by an almost inexistent percentage of acquittals (less than 1%). This figure was provided by the Judicial Council at the meeting.

158. One of the most outstanding deficiencies of court procedures is the sometimes difficult access to legal aid, in particular in politically sensitive cases. The environment for lawyers and human rights defenders has deteriorated.[62]

159. Arbitrary expulsions from the Azerbaijani Bar Association and criminal cases lodged against some of them have also been reported.[63] We are particularly concerned by the reported violations of the Law on the Bar, in particular with regard to the election of the presidency. We hope that this situation, detrimental to the rule of law, will soon be remedied.

160. Pressure is also put on the activities of independent lawyers and human rights defenders. They are subject to threats and blackmailing by the authorities; sometimes they are prevented from enjoying their professional rights, or these are interfered with, such as meetings with clients or independent carrying out of their duties.

161. Several lawyers have allegedly been warned not to defend the rights of detained persons. The following cases may illustrate the problem: a criminal case was opened against one lawyer, Mr Khalid Bagirov, on charges of defamation for having disseminated information in the media about alleged police involvement in the ill-treatment and death of Mr Elvin Askarov. However, we note with satisfaction that the case was terminated by the District Court in April 2011.

162. On 4 February 2011, a well-known defence lawyer, Mr Osman Kazimov, was temporarily suspended from practising as a legal counsel by the Azerbaijani Bar Association following accusations of illegal acts in a criminal case. Later, however, following a favourable court decision, the Bar Association rescinded its decision and withdrew the lawsuit.

163. Mr Alaif Hasanov, the defence counsel of Mr Bakhtiyar Hajiev and Mr Shahin Hasanli, stated that he was subjected to a smear campaign by local authorities in the region of his residence after March 2011.

164. According to the information we received, there are few lawyers in Azerbaijan who are prepared to undertake sensitive human rights or political cases.[64]

165. Our concern has also been raised by reports of restrictive use of certain articles of the Criminal Code (in particular Articles 221 and 233) against participants of peaceful albeit unauthorised demonstrations.

166. This was particularly the case of 15 people arrested and sentenced following the protests in Baku in March and April 2011. They were convicted for "organising and participating in actions that disturb public order" under Article 233 of the Criminal Code. All those convicted received sentences of between one and the half and two and half years of imprisonment. According to Amnesty International, they were sentenced solely on the grounds of having allegedly organised and/or participated in protests.

167. We met two activists imprisoned in Prison No. 19 in Baku for two and three years respectively. The evidence that they provided us with confirmed our earlier concerns.

168. The above-mentioned Article 233 is a vague and ill-defined provision. The criminal activities defined by it may range from "infringement of normal activity of transport and enterprise" to "insubordination towards the authorities". There is no distinction between "organising" and "participating". Restrictive interpretations of this article by court judges have, on several occasions, resulted in the sentencing of people who had called for participation in peaceful protest demonstrations. The same can be said about Article 221, popularly referred to as the "article on hooliganism".

169. Allegations of corruption in the judiciary is a concern which can undermine the population's confidence in the impartiality of judges.

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62. See Report of the Amnesty International on freedoms in Azerbaijan published in November 2011.
63. For example, Mr Elchin Namazov, a prominent lawyer defending participants in demonstrations in April 2011, was disbarred from the Bar Association in September 2011 by a court ruling.
64. Human Rights House Foundation, "Serious concerns about human rights abuses in the Republic of Azerbaijan", June 2012.

170. Following the recommendations of GRECO, the government has undertaken a number of measures to eradicate this problem. An anti-corruption campaign in the judicial system included the establishment of internal monitoring groups within the justice institutions and an anti-corruption division in the Judicial Legal Council. In 2010, the Ministry of Justice reported that the Judicial Council had initiated disciplinary proceedings against 21 judges; 11 employees of the Ministry were subjected to disciplinary actions and two of these cases were sent to the Prosecutor General's Office, resulting in one conviction.

171. The capacities of the Anti-Corruption Department of the Prosecutor's General Office have been strengthened and the first steps have been taken to introduce e-services. As a result, in September 2011, the Anti-Corruption Department of the Prosecutor's General Office announced that it had filed 133 criminal cases in 2011, 88 of which had been completed and submitted to the court. 147 people were accused of bribery, abuses of position, fraud or forgery.

172. However, the fight against corruption requires a comprehensive and more systemic approach. The next chapter deals with it in more detail.

6.2. Corruption and organised crime

173. Corruption is perceived by public opinion as a normal practice in Azerbaijan. It affects the whole society including at the political level, executive branches and the judiciary, and it has a detrimental impact on the economic situation. Transparency International has persistently rated Azerbaijan as one of the most corrupt countries in the world. According to the Corruption Perception System Index for 2011, Azerbaijan was ranked 143 out of 183 with a score of 2,4 out of 10. The authorities have declared the fight against corruption as a political priority in Azerbaijan.

174. Upon accession, Azerbaijan committed itself to "adopt, within one year of accession, a law on combating corruption and, within two years of its accession, a State programme on combating corruption". Furthermore, it undertook to "sign and ratify, within two years of its accession, the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption".

175. Azerbaijan ratified the Criminal Law Convention on Corruption (ETS No. 173) in 2004. It subsequently joined GRECO and became subject to the monitoring procedure of the convention. The most recent report of the third evaluation round dates back to October 2010.

176. Following the ratification of the convention, Azerbaijan introduced, in 2006, amendments to the corruption provisions of the Penal Code which can be considered as an important step toward bringing the legislation into line with the convention's requirements. Active and passive bribery in the public sector, trading in influence, non-material benefits and bribery through a third person are criminalised in accordance with the convention. In March 2012, the liability of legal entities was introduced into the Penal Code.

177. Although Azerbaijan has made important progress in the criminalisation of corruption, further significant legal amendments are necessary, in particular with regard to the scope of the definition of "an official", which should include all civil servants and public employees at central and regional level, and of "a completed crime of bribery" so that it also covers the promise of a bribe as well as acceptance of an offer.[65]

178. Moreover, the immunity granted to public officials should not present an obstacle to effective criminal prosecution of their corruption. The immunity should be limited to performance of official duties.

179. The country has made progress in establishing rules of ethical conduct for public officials in general and for specific government authorities and professions, including a code of ethics for judges. There is a legal obligation for public officials to declare income and assets, but this obligation seems not to be enforced. Furthermore, there are no clear regulations on conflict of interests and no legislation on the protection of whistleblowers.[66]

180. While the legislation of Azerbaijan largely complies with the convention in the area of confiscation of proceeds from corruption crimes, implementation of the laws in force should be more efficient.[67]

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65. The authorities informed us that the changes to the Criminal Code addressing these problems have been adopted since the publication of the last GRECO report.
66. In their comments, the authorities informed us that the draft law on the prevention of conflict of interest in activities of public officials is under preparation.
67. See OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, March 2010.

181. Furthermore, Azerbaijan should reconsider its position concerning the reservations made to the convention, first introduced for a period of three years in 2004 and subsequently renewed for a period of three years from June 2010 to June 2013. They concern bribery of foreign public officials, members of foreign public assemblies, members of international parliamentary assemblies and trading in influence.[68]

182. Azerbaijan should also become a Party to the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191) without further delay.

183. However, the main challenge with regard to fighting corruption in Azerbaijan lies with the effective application of legislation. While the authorities, at different levels of power, have declared fight against corruption a political priority, failure to implement certain measures may indicate insufficient will to fullfil declarations.

184. In 2007, Azerbaijan elaborated a National Strategy on Increasing Transparency and Combating Corruption. It was completed by an Action Plan for 2007-2011. We were informed that a new Action Plan has just been prepared and is currently being considered by the Cabinet of Ministers. We were informed that civil society has been involved in the preparation of some parts of the Action Plan which we find to be a positive development.

185. In general, however, the involvement of non-governmental organisations in the anti-corruption activities carried out by the government remains limited to participation of NGO representatives in one working group of the Commission on Combating Corruption. This is regrettable because potentially the NGO contribution could be much bigger. The government should establish mechanisms to ensure more active participation of civil society in anti-corruption strategy.

186. The authorities should be commended for the anti-corruption campaign launched in early 2011, and including activities and programmes for public officials and law enforcement officials to raise awareness about corruption, especially legal issues and reporting. So far, its impact has been rather modest.[69]

187. The authorities have made significant progress in strengthening the capacity of the Anti-Corruption Department within the Prosecutor's General Office, which is the main body to fight corruption through law enforcement. Last year, the number of employees under the direct responsibility of the Prosecutor General increased from 60 to 100. Their salaries have been considerably increased.

188. This autonomous department is composed of specialised prosecutors who are competent to investigate and prosecute corruption and to propose anti-corruption measures. A special "161" hotline has been established for receiving corruption-related complaints from the public.

189. In 2011, the Anti-Corruption Department completed 142 criminal cases involving 229 people and prosecuted them. In 2012, 70 criminal cases, involving 134 people, were completed and transmitted to the courts.

6.3. Execution of judgments of the European Court of Human Rights

190. According to the information provided by the Registry of the European Court of Human Rights, as of 2011, as many as 1 543 cases against Azerbaijan were pending before the Court.

191. As mentioned before, the Committee on Legal Affairs and Human Rights monitors the execution of the judgments by national authorities of the countries concerned in periodic reports. In the last report, debated in the Assembly in 2011, Azerbaijan was not included in the group of nine countries in which major structural problems with regard to cases in which extremely worrying delays in implementation have arisen.

192. The Court's judgments in respect of Azerbaijan illustrate all the major concerns which are the subject of the present report. The majority of complaints brought before the court can be divided into three groups concerning ill-treatment in detention, freedom of expression, and the non-enforcement of domestic judicial decisions. We have also mentioned the cases concerning the violation of electoral rights.

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68. In their comments, the authorities informed us that Azerbaijan had withdrawn all reservations by decision of the parliament on 1 October 2012.

69. In their comments, the authorities informed us about progress in building the system of electronic public services which, in their opinion, should contribute in an important way to the fight against corruption.

7. Human rights and fundamental freedoms

193. The last report of the Council of Europe Commissioner for Human Rights was published in June 2010. In September 2011, the Commissioner published observations on the respect of human rights in Azerbaijan, as a follow-up to his 2010 report, in which he stated that his recommendations from the report had not been implemented.

194. The last ECRI report was published in May 2011. It raised some concerns about freedom of religion.

195. In December 2011, Amnesty International published a report on Azerbaijan. As mentioned above, the Monitoring Committee held a hearing on this subject with Amnesty International's representative on 16 December 2011.

196. In the present chapter, we also used reports of Human Rights Watch, Human Rights House and other international and national watchdog organisations.

197. In 2011, the National Programme for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan was approved by Presidential Order. It charged the Human Rights Commissioner (Ombudsperson) of Azerbaijan to lead the working group on co-ordination of implementation of the Programme. It contains a number of concrete steps and measures to be taken (including introduction of legislation) aimed at the fulfilment of Azerbaijan's obligations and commitments arising from international treaties and conventions.

7.1. Alleged political prisoners and humanitarian issues

198. As of today, Amnesty International considers that there are eight people who are either prisoners of conscience or facing trumped-up charges in Azerbaijan; 15 others, detained and sentenced to two to three imprisonment last year following the March and April demonstrations, have been released following court decisions or presidential pardons.

199. In 2010, the European Court of Human Rights ordered the release of the journalist Mr Eynulla Fatullayev from prison and awarded him €25 000 in moral damages. It concluded that there had been two violations of Article 10 of the Convention as well as a violation of Articles 6.1 and 6.2 (presumption of innocence).

200. As mentioned above, the question of alleged prisoners is dealt with by our colleague from the Committee on Legal Affairs and Human Rights, Mr Strässer. His report, adopted in committee last June, is on the agenda of the Assembly's January 2013 part-session (Doc. 13079).

201. Without prejudice to the Assembly's forthcoming debate, we would like to raise here the following important questions.

202. There is a persisting problem with regard to justice in Azerbaijan. There are too many reports by international NGOs on the alleged use of fabricated charges (see below), or repressive use of some Criminal Code articles against activists and journalists, to be ignored or considered as simple mistakes by the courts. Repeated presidential pardons are not a solution either. It is the judiciary's ultimate responsibility to adjudicate cases fairly and on the merits, and to critically assess the evidence provided by the prosecution and the defence.

203. Since the beginning of our mandate, we have been very much concerned with the question of alleged political prisoners and prisoners of conscience. Whilst we understand Azerbaijan's fear of extremism and terrorist threats, at the same time we condemn the suppression of basic freedoms by means of criminal prosecution. During each of our visits, we met people who were or had been imprisoned and who claimed that the real reason for their detention was their opinions and critical views, even if they had been sentenced on criminal charges. Their evidence was most troubling. We have discussed individual cases with the relevant authorities and have achieved some positive results and some people have been released.

204. Following our consultations with the authorities, civil society activists, NGO representatives, journalists and independent lawyers, we urge the authorities to reconsider the cases of the following persons with a view to finding a legal remedy to concerns raised: persons still in prison: Aliyev Mamedali Dilavar, Asgarov Mammad Tofiq, Bayramli Anar, Farzullayev Jeyhun Hidayet, Hasanli Shahin, Ilyasov Fari, Iskandarov Zaur Shalar, Iskenderov Vivaldi, Ismaylov Araz Vasif, Jabiyev Azer, Janiyev Aydin, Khasmammadov Taleh, Musayev Ilgar, Panahov Neymat; as well as persons facing charges and awaiting court proceedings, whose cases we raised with the authorities: Gonagov Vugar, Guliyev Zaur, Zeynalli Avaz, Seyidov Elnur, Mamedov Bakthiar, Amiraslanov Ilhan, Gulaliyev Ogtay, Babayev Dayanat, Huseynov Mehman.

205. In late 2011, the Ministry of Justice allowed the OSCE to conduct a number of human rights monitoring missions in detention facilities and we consider this a sign of good will and a better outlook for the future.

7.2. Conditions of detention and abuses by law enforcement agencies

7.2.1. Torture and other ill-treatment

206. There have been alarming reports by human rights defenders and domestic and international NGOs about alleged cases of torture and other ill-treatment at police stations, during the investigation period and in penal institutions. Torture is also reported in the armed forces. There are reports of the use of violence by the police against journalists documenting events. At our specific request, representatives of the authorities assured us that the law enforcement agents take all necessary measures to investigate these allegations.

207. The circumstances of the deaths in prison of Mr Novruzali Mammadov, Editor-in-Chief of the *Tolishi Sado* newspaper in 2009, and of Mr Turaj Zeynalli in the Nakhichivan branch of the Ministry of National Security in 2011, are unclear and have not been properly investigated.

208. Mr Afgan Mukhtarli claimed that he was attacked by law enforcement officers in January 2009 when, on assignment for *Yeni Musavat*, he was covering a rally in front of the Israeli Embassy. The case was dropped by the prosecutor for lack of evidence and is now before the European Court of Human Rights.

209. According to some local NGOs, in February 2009, national security officials from the Nakhichivan Autonomous Republic detained and ill-treated freelance journalist, Mr Idrak Abbasov.[70]

210. Mr Seymur Haziev, a reporter for *Azadiq*, was detained and ill-treated on 15 May 2010, when he took part in a rally at which demonstrators called for the restrictions on freedom of assembly to be lifted. He filed a complaint but the investigation brought no results.

211. Several activists detained at, and subsequent to, the protests in March-April 2011 have complained of ill-treatment during their arrest and subsequently while in police custody.

212. To date, no effective investigation has been carried out in the cases of the alleged ill-treatment of Mr Hasan Karimov, Deputy Chairperson of the Popular Front Party, who was arrested at home without a warrant and detained in conditions threatening his health, which resulted in his hospitalisation; Mr Tazakhan Miramamli, Chairperson of the Jalilabad branch of the Popular Front Party, who was beaten on 2 April 2011 by the police during his arrest and custody; Mr Tural Abbasli, who was arrested on 2 April 2011 and prevented from seeing his lawyer for the first two days in detention, and allegedly beaten; Mr Bakhtiyar Hajiyev, opposition activist, who was detained and charged with evading military service on 4 March 2011, shortly after calling for an online protest. He was allegedly threatened and beaten while in custody. On 4 June 2012, a court granted Mr Bakhtiyar Hajiyev a conditional release nine months before the completion of his two-year sentence. However, the allegations of ill-treatment still remain, without any effective investigation being conducted.[71]

213. More recently, the torture of human rights defender, Mr Zeynal Bagirzade, was reported in Nakhichevan in December 2011; and the strong pressure on the Editor-in-Chief of the regional broadcasting company “Khayal”, Mr Zaur Guliyev, and an employee, Mr Vugar Gonagov, was reported in March 2012.

214. During our visit in June 2012, we met Mr Ogtay Gulaliyev, a journalist and a co-ordinator of Kur Civil Society, a non-governmental organisation that advocates the rights of residents affected by the floods of May 2010. We welcome his release; he had been detained for two months, since April 2012. During this time, he claimed he was subjected to ill-treatment and reported abuse by the police. The charges against him have not been dropped.

215. The allegations of ill-treatment and the climate of impunity are confirmed by several judgments of the European Court of Human Rights. In recent years, the Court has found Azerbaijan guilty of violations of Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the Convention on several occasions.[72]

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70. Report on Azerbaijan of the Human Rights Watch, October 2010.
71. Human Rights House Foundation, Briefing Note to the Parliamentary Assembly, June 2012.
72. See, for example, the cases of *Garayev v. Azerbaijan*, judgment of 10 June 2010, or *Muradova v. Azerbaijan*, judgment of 2 April 2009.

216. In 2007, Mr Jalaloglu won the case concerning torture in prison during his arrest in 2003, but so far no-one has been punished for it, even though the identity of one perpetrator is known.

217. In *Hummatov v. Azerbaijan*, the Court held that inadequate medical treatment for tuberculosis was a violation of Article 3 and that the lack of an effective remedy violated Article 13.[73]

218. It is worrying that so far none of these judgments has led to prosecution of law enforcement officials.

219. More cases are pending judgment before the Court. For example, Mr Emin Huseynov, a journalist and Director of the Institute for Reporters' Freedom and Safety (IRFS), was detained in June 2008 and allegedly ill-treated in custody. The police has dropped the investigation and the case is now before the Court. We met him on several occasions and heard his personal account.

220. The most recent report on Azerbaijan was published by the CPT in 2008. It also reports ill-treatment in prisons. In this regard, we welcome the National Programme for Action approved by the President of Azerbaijan on 27 December 2011, which raises the effectiveness of the protection of human rights and freedoms. This programme provides for stronger measures to investigate cases of violation of human rights of persons in custody, including cases of torture, ill-treatment and abuse. It also provides for the adoption of a new law on the rights of arrested persons and training for judges and law enforcement officers.

221. Violence against journalists documenting different events is another outstanding concern. Mr Elmin Badalov, a *Yeni Musavat* reporter, and another reporter, Mr Anar Gerayli, allege that they were attacked by police on 28 July 2010, while they were taking photos for an investigative story about luxury villas on the outskirts of Baku. They have lodged a complaint.[74]

222. On 2 April 2011, several journalists covering the anti-government protests were prevented by law enforcement officials from photographing and interviewing participants, and were then detained.[75]

223. Some Azerbaijani journalists, documenting the demolition of houses in Baku, were subjected to attacks. For example, Mr Idrak Abbasov, the Index-Guardian Award for Journalism 2012 winner, was beaten on 18 April 2012 when documenting a demolition on the outskirts of Baku. Turan Information Agency photographer, Mr Etimad Budagov, and reporter, Mr Nushaba Fatullayeva, were attacked while filming another demolition in Baku.[76]

7.3. Freedom of expression

224. Freedom of expression raises concern in Azerbaijan. The situation as described by civil society organisations and the extra-parliamentary opposition can be characterised by State control of the broadcast media, limited diversity in the print media, criminalisation of defamation and practices of placing pressure on critical journalists, which is aggravated by impunity of the perpetrators.

225. We have been provided with a number of alarming reports on violations of the freedom of expression by national and international watchdog organisations, including Reporters Without Borders, the Committee to Protect Journalists, Amnesty International, Human Rights Watch and The Human Rights House Foundation.

226. Furthermore, serious concerns with regard to the freedom of expression were raised by the Council of Europe Commissioner for Human Rights in his 2010 report on Azerbaijan and his observations on the human rights situation in 2011, by the OSCE Representative on Freedom of the Media[77] and by the European Parliament.[78]

227. Azerbaijan ranks 162nd in a list of 173 countries in the Reporters Without Borders World Press Freedom Index. This is the poorest record of any Council of Europe member State. Azerbaijan came in lower than countries such as Saudi Arabia or Uzbekistan.

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73. The authorities stressed that the judgment refers to events dating back to 2004. Since then, considerable progress has been made in the treatment of tuberculosis in detention and penitentiary facilities.
74. Report on Azerbaijan, Human Rights Watch, October 2010.
75. See footnote 58.
76. Ibid.
77. See www.osce.org/fom.
78. See the Resolution on the human rights situation in Azerbaijan adopted by the European Parliament on 24 May 2012, 2012/2654(RSP).

228. There is a glaring lack of diversity in the broadcast media. The monitoring conducted on the country's nationwide television channels (two State channels, one public channel and five private channels) in the framework of the "Free Airways" Project, financed by the European Commission, showed that television is used as a platform for pro-governmental propaganda and there is a total absence of any critical opinions.[79] Moreover, several opposition politicians and human rights defenders are not given sufficient access to airtime and there is insufficient coverage of their activities.

229. Upon accession, Azerbaijan committed itself to "turn the national television channel into a public channel managed by an independent administrative board". The second State television channel (AzTV2) was legally transformed into a public service broadcaster in 2005. However, the first State television channel (AzTV1) still remains in State hands and continues to operate with an increased budget, despite repeated calls from the Council of Europe, the OSCE Representative on Freedom of the Media and the OSCE/ODIHR to remedy this situation. In 2007, Council of Europe experts made recommendations to establish safeguards in legislation to secure the independence of the broadcast media, but the Law on Radio and Television has not been amended so far.

230. Furthermore, in 2008, the government banned three foreign radio stations; Radio Liberty, BBC and VOA, from broadcasting via local FP frequencies. These stations were highly appreciated by the population.

231. The advertising market in Azerbaijan is very limited in volume. There are, however, a few national newspapers, including two newspapers, *Azadig* and *Yeni Musavat*, expressing the opinion of the opposition and which maintain their editorial independence, but their total circulation does not exceed 25 000 copies in a country of over nine million inhabitants.

232. In this situation, the Internet and social media have become an important platform for expressing critical and opposition opinions. While the electronic media are considered largely free from direct censorship in Azerbaijan, the authorities monitor the content and sometimes take action against those who express critical views (see below).

233. The legislative framework with regard to the freedom of expression also raises some concern. In particular, repeated calls have been addressed to the authorities by the Parliamentary Assembly, the OSCE Representative on the Freedom of the Media and the Commissioner for Human Rights to delete Articles 147 (defamation) and 148 (insult) from the Criminal Code, which provide respectively for up to three years and up to six months of imprisonment. The European Court of Human Rights has delivered several judgments condemning imprisonment for defamation.[80] Decriminalisation of defamation is an essential step for the protection of the freedom of expression.

234. The Ministry of Justice has issued warnings to the Institute for Reporters' Freedom and Safety[81] and to the Nakhichivan-based Democracy and NGO development Resource Centre, citing the dissemination of "biased" information via the hyperlink www.nakhchivan.org.az in February 2012.

235. Over the past years, a number of journalists, including Mr Eynulla Fatullayev, have been sentenced under the defamation provisions and this practice continues. Libel in Azerbaijan is considered as a criminal offence and the authorities have been using it against opposition journalists to silence critical voices. The problem is well illustrated by the case of Mr Eyyub Karimov, the Editor-in-Chief of Femida OO7, who was sentenced to 18 months of corrective labour and a monetary fine following the charges introduced by the Minister of Internal Affairs over certain critical articles published in the newspapers.[82]

236. In the first half of 2011 alone, there were seven libel cases against journalists; two resulted in imprisonment.[83]

237. The "National Action Programme for increasing the efficiency of human rights and freedoms in the Republic of Azerbaijan" included plans for the adoption, in 2012, of a new defamation law, which would decriminalise defamation. During our last visit, in November 2012, we were informed that, in September 2012, the Azerbaijani authorities had requested the Venice Commission's assistance in drafting the new Law on Defamation.

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79. Human Rights Watch report on Azerbaijan, "Beaten, blacklisted and behind the bars; The vanishing space for freedom of expression in Azerbaijan", 2010.
80. See cases of *Fatullayev v. Azerbaijan* and *Mahmudov and Agazade v. Azerbaijan*.
81. The authorities, in their comments, observed that the warning had resulted from the failure, since 2006, by this organisation to submit to the Ministry of Justice information on the election of its Chairperson, as required by the law.
82. Report of Amnesty International, November 2011.
83. Ibid.

238. The Laws on the Protection of Data and on Access to Information were recently amended. The recent amendments to the Law on Obtaining Information put little or no obligation on State bodies to respond to public requests for information and severely limited the freedom of information of Azerbaijani citizens.

239. In his report on Azerbaijan, the Commissioner for Human Rights draws attention to the existence of a "black list of racketeering newspapers", published by the Azerbaijani Press Council.[84] This list contains the names of 90 newspapers which have allegedly breached ethical rules of journalism and have been accused of resorting to blackmail. While acknowledging the need to ensure the professionalism of journalists, the Commissioner expressed strong reservations about this approach, which entails a risk of partial and arbitrary decisions. On the other hand, we were informed of the positive experience of keeping such a "black list of racketeering newspapers" by the Azerbaijani Press Council. A newspaper may be put on the list if it receives several warnings following complaint examination procedures conducted by the Council. Such a blacklist has no legal force and, being a form of public reprimand, also serves the purpose of informing the general public about newspapers breaching the Code of Conduct for Journalists.

240. We have received some worrying reports on the use of fabricated charges to arrest journalists, human rights defenders, parliamentary candidates and activists. One of the recommendations in the 2010 report of the Commissioner for Human Rights was to end practices of unjustified or selective criminal prosecution of journalists or others who may express critical opinions.

241. The practice may be illustrated by the example of Mr Eynulla Fatullayev, who was charged in 2009 with possession of drugs while in prison in relation to a defamation charge. He was released by presidential pardon in 2011. The criminal proceedings against the two activists from Baku, Mr Emin (Milli) Abdulayev and Mr Adnan Hajizadeh, often referred to as "bloggers", sentenced in 2010 for hooliganism and released in 2011, follow a similar pattern.

242. The most recent examples include the case of Mr Avaz Zeynalli, Editor-in-Chief of *Khural*, who was arrested in October 2011 on charges of accepting bribes. His claim is that the person who has accused him had, in fact, offered him a bribe in return for silence and he had refused it. Reporters Without Borders, which is following this case, as well as other international watchdog organisations, believe that the charges were fabricated.

243. In November 2011, Mr Taleh Khasmammadov, a blogger and human rights defender, was charged with hooliganism and physically assaulting a public official, but he claimed that he was prosecuted for his blogging on human rights activities.

244. Blogger and civic activist, Mr Bakhtiyar Hajiyev, who was conditionally released on 4 June 2012, had been sentenced, in May 2011, to two years' imprisonment on charges of evading military service, following his role in organising the March 2011 protests via Facebook. The timing of his arrest and the charges against him appear to be indicative of an attempt to stop his criticism of government activities. Moreover, the conviction relates to the provision of an alternative to military service, which is guaranteed in Article 76 of the constitution and constitutes one of Azerbaijan's commitments. However, the law on alternative to military service has so far not been adopted (see below).

245. In May 2011, Mr Jabbar Savalan, a member of the youth group of the Azerbaijan Popular Front Party, was sentenced to two and a half years' imprisonment on drug possession charges. This happened soon after he had posted several critical comments against the authorities and called for protests via social networks. International and national civil society organisations have voiced their concern about what they consider to be fabricated charges. He was released by presidential pardon in December 2011.

246. In August 2011, Mr Vidadi Iskenderov, candidate in the 2010 elections, was sentenced to three years' imprisonment on charges of interference with parliamentary elections. He had earlier spoken out about fraud during those elections.

247. According to the Human Rights House Foundation, as at 4 June 2012, seven journalists were imprisoned in Azerbaijan. Human rights defenders and political and civil activists are confronted with similar problems when they are critical towards the authorities. According to the Human Rights House Foundation, as at 4 June 2012, four human rights defenders were imprisoned.[85]

84. See document CommDH(2010)21.

85. Human Rights House Foundation, Briefing Note to the Parliamentary Assembly, June 2012; see also Amnesty International website.

248. During our visit to Azerbaijan on 12 June 2012, Mr Mehman Huseynov, a photojournalist and blogger, was arrested and charged with assaulting police officers at an unauthorised anti-government rally, organised during the Eurovision Song Contest hosted in Baku in May 2012. He was released after a few hours but the charges have not been dropped. We spoke to his brother, Mr Emin Huseynov, who is Director of the Institute for Reporters' Freedom and Safety and who believes that pressure on one photojournalist is pressure on all participants of the Sing for Democracy Campaign.

249. In recent years, those who have been jailed in connection with the exercise of their right to freedom of expression have often been released before the end of their sentence (this was the case for Mr Eynulla Fatullayev, for example, at the end of May 2011, and for bloggers Mr Adnan Hajizade and Mr Emin Milli). However, the terms of release leave former prisoners with criminal records, which is an obvious handicap for their future lives.

250. In addition to spurious charges and imprisonment, journalists documenting and reporting human rights violations are sometimes subject to attacks. According to the 2012 Human Rights World Report on Azerbaijan, there were more than 50 reports of alleged harassment or attacks on journalists in 2011. In a large majority of these cases, the perpetrators have not been brought to justice.

251. The murder of the Editor of the magazine *Monitor*, Mr Elmar Huseynov, in 2005, and the fatal stabbing of journalist and writer, Mr Rafiq Tagi, in 2011, remain unsolved and the ongoing investigations have had no results.

252. Mr Seymur Haziyev, a journalist from the opposition newspaper Azadliq, was reportedly beaten on 26 March 2011. According to his report, his attackers warned him against writing critical articles. His case has recently been sent back by the Court of Appeal for additional investigation. We have insisted with the authorities that this case should be clarified.

253. Mr Agil Khalil, an investigative correspondent of *Azadliq*, has been the victim of several attacks, including stabbing. Despite his complaints to the local police about the threats to his life that he had received, nothing has been done to protect him.

254. On 3 April 2011, another journalist from *Azadliq*, Mr Ramin Deko, was reportedly assaulted and warned not to write critical articles.

255. According to the documents of Human Rights Watch, harassment, assault, intimidation of, and threats to, Azerbaijani journalists have increased in recent years. In almost all the cases documented by them, journalists filed complaints following the attacks, but effective investigations leading to prosecution of perpetrators did not follow.[86]

256. On 7 March 2012, the investigative reporter of Radio Free Europe, Ms Khadija Ismailova, who had been investigating claims of a possible conflict of interest regarding a lucrative construction project in Baku, received a letter with some intimate pictures of her taken by hidden cameras in her apartment and a threat that they would be published on the Internet if she did not halt her investigation. She publicly exposed this blackmail attempt, which resulted in the video's publication. The authorities publicly condemned the publication of that video. According to information received, the Office of the Prosecutor General has started a criminal investigation into Ms Ismailova's complaint, which is still underway. So far, nobody has been brought to justice.

7.4. Freedom of assembly

257. Since early 2006, the local authorities in Baku have regularly prohibited public gatherings in the city centre on the grounds that they would disturb the population. There are officially designated areas outside the city centre, with no connection with daily city life. Demonstrations which go ahead without authorisation are often dispersed with force and lead to arrests and in some cases disproportionately harsh sentences of administrative detention or prison.

258. Freedom of assembly encountered serious setbacks in 2011, in particular in March and April, when approximately 200 people, including the head of the Youth Organisation of the Musavat Party, Mr Tural Abbasli, were detained during unauthorised demonstrations in the centre of Baku. According to the activists, the protests were sometimes dispersed with excessive force, and the work of journalists was hindered.

86. Human Rights Watch report on Azerbaijan, 2010.

According to the authorities, 13 police officers were injured, more than 20 vehicles were damaged and windows of 17 shops and banks were broken by protesters. Video footage confirms to a certain extent the allegations from both sides.

259. The Azerbaijani courts sentenced at least 30 people to between five and eight days in prison in trials that were closed to the public. Moreover, most defendants did not have access to their lawyers. Furthermore, 14 persons received sentences of one and a half to three years' imprisonment on criminal charges for participating in "actions causing disturbance of public order" following trials whose conformity with human rights standards has been called into question by some NGOs and human rights defenders.

260. As we mentioned above, during our visit in February 2012, we met two imprisoned activists, members of the Musavat and the Popular Front Parties, who had been sentenced to two and three years respectively for vandalism. They described to us the circumstances in which they were detained, confirming the concerns raised by domestic and international civil society.

261. To date, no participants of those demonstrations remain in detention. During our last two visits, we insisted that all persons be released without delay using all possible legal means.

262. In March 2012, Baku police used force to disperse an unauthorised but peaceful demonstration in the city centre. Four youth activists were beaten and 14 protesters and a journalist documenting the event were arrested.

263. Also in March 2012, a peaceful protest in Guba, which gathered approximately 1 000 participants, demanded the resignation of the head of the local executive power. The action was dispersed with use of disproportionate riot forces. At least two journalists were seriously injured.[87]

264. Attempts at unauthorised demonstrations close to the area of the Eurovision *S*ong Contest were also dispersed.

265. In all the above cases, the organisers were denied authorisation to demonstrate in the centre of Baku, and the authorities proposed venues on the outskirts. The Commissioner for Human Rights has publicly criticised this method of restricting the freedom of assembly. The case law of the European Court of Human Rights[88] also indicates that the authorities' refusal is a violation of Article 11 of the Convention.

266. In a worrying new development, parliament has recently adopted amendments to the Criminal Code and Administrative Code increasing penalties for participants in and organisers of unauthorised demonstrations. Combined with an ongoing blanket ban on rallies in Baku, these amendments are likely to further limit freedom of assembly and expression. In our talks with the authorities, we insisted on the need to find a compromise solution with the organisers of demonstrations and to designate a place in Baku which would satisfy them and, at the same time, meet safety requirements.

267. The OSCE/ODIHR and the Venice Commission have jointly published a set of Guidelines on Freedom of Peaceful Assembly which should serve as a useful tool for legislators and authorities.

7.5. Freedom of association

268. According to the authorities, more than 2 700 NGOs are registered in Azerbaijan. The vast majority of them regroup people sharing the same interest, which they try to promote (for example elderly people, women, veterans of war, IDPs, etc.).

269. The government promotes civil activism in some areas and it receives support from the international community in this respect, including from the Council of Europe and the OSCE in the framework of co-operation programmes. While in Guba, we met a representative of an association tasked with assisting local NGOs to conduct their activities. This action is financed partly by the government and partly by the projects of international NGOs.

270. However, the NGOs operating in the field of human rights and freedoms, in particular those openly critical of the government, encounter some problems.

87. In their comments, the authorities claimed that the demonstration in Guba had not been peaceful; the protesters had allegedly set fire to a private house, damaged public and private property and injured a number of police officers.
88. See *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, judgment of 2 October 2001.

271. The question of registration of non-governmental organisations remains a concern. The amendments to the law on NGOs, adopted on 9 June 2009, introduced a number of restrictive provisions concerning international NGOs, including the provision barring foreign NGOs from operating unless their activities were based on a formal international agreement. The procedure for concluding such agreements, which was announced by the government in the Decree published only on 16 March 2011, remains unclear.

272. And yet, on 10 March 2011, the branch of the Human Rights House Foundation in Azerbaijan was closed following a notification from the Registration Department of the Ministry of Justice, which stated that the Human Rights House had not concluded any agreement with that Ministry, as required by the amendments to the law on NGOs. This organisation has recently selected a local co-ordinator and continues its operations in the country. At the same time, another international NGO, present in Azerbaijan since the mid-1990s, the National Democratic Institute, has been closed.

273. Moreover, according to the requirements defined in the decree, international organisations must respect "national and moral values" and not be involved in "political or religious propaganda", which may always be used as a pretext not to register an NGO. These terms are too vague and may easily be subject to misinterpretation.

274. National NGOs also encounter difficulties in carrying out their activities.[89] Although Azerbaijani national registration does not explicitly provide for compulsory registration of local NGOs, in order to acquire the legal entity status necessary to operate, they have to be registered. Therefore, in most cases, NGOs apply to the Ministry of Justice for registration. However, NGOs are sometimes subject to restrictive application of the regulations, which result in long delays or absence of any formal decision on registration. In several cases, refusals failed to indicate the legal basis for a negative decision. According the Norway-based NGO "Human Rights Home Foundation", this was the case of the Election Monitoring and Democracy Education Centre (EMDEC), a well-known NGO.[90]

275. On 3 October 2011, the Council of Europe Conference of International Non-Governmental Organisations criticised the amendments to the law on NGOs and adopted a recommendation in which it called on the Azerbaijani authorities to revise this law.

276. In its legal opinion, delivered in October 2011, the Venice Commission identified a number of problems, referring primarily to the registration process. It says that the 2009 amendments and the 2011 decree overturn the previous efforts to meet the requirements of international standards.

277. Moreover, in the past few months, some national and international NGOs have faced difficulties in freely carrying out their activities. There have been reports of threats and harassment against members of civil society, including human rights defenders and their families. The concerns raised in the previous chapter on freedom of expression are directly linked to the activities of civil society in Azerbaijan.

7.6. House demolitions

278. The Baku Mayor's office began an expropriation campaign in 2009 in order to build a "garden-park" complex, among other construction projects, as part of a reconstruction programme. Those who refused compensation or resettlement were evicted. According to the authorities, some dissatisfaction emerged with regard to the amount of the financial compensation given, but a large majority of the residents agreed with the standard financial proposal.

279. During our meetings with representatives of civil society, criticism was voiced in this respect. Their concerns are many: firstly, the whole process lacks transparency. Long-term planning is not public enough; there is no public access to documentation; the procedure and decision-making process are unclear; and in some cases inhabitants are forced to leave their homes at a very short notice. We were informed that at none of the courts' hearings where local residents have challenged the demolition of their houses have the Baku City authorities presented an urban development programme.

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89. Azerbaijan has been found guilty of violations of Article 11 (freedom of association) by the European Court of Human Rights on several occasions, including in the following cases: *Ramazanova and others v. Azerbaijan* (2007); *Ismayilov v. Azerbaijan* (2008); *Nasibova v. Azerbaijan* (2007); *Aliyev and others v. Azerbaijan* (2008) and *Tebieti Mühavize and Israfilov v. Azerbaijan* (2009).

90. Report on the state of the non-governmental sector in Azerbaijan, Human Rights House Foundation, Baku, 2011.

280. Secondly, forced evictions are against the Azerbaijani law in force, which guarantees the right to private property and allows the State to expropriate property only in limited cases, such as for national defence or State purposes.[91] Expropriations must be based on a court order.[92] Many demolitions have been carried without such an order or in some cases, despite the court decision prohibiting demolition pending the final outcome of the court proceedings.

281. Thirdly, there is a single price of US$1 900 per square meter, irrespective of a property's use, age or condition. The authorities emphasised to us that the premises to be destroyed are mostly old and dilapidated. On the other hand, it is true that some owners have valued properties in central Baku at US$5 000 per m^2, and in some cases even more, but during our discussions it became clear that such prices only concerned well-located apartments in newly constructed buildings. The inhabitants have not received compensation for the land on which their houses were located in contradiction to the law in force.

282. Furthermore, to date, 30 houses which were designated as architectural monuments by the Cabinet of Ministers' decision No. 132 (2001) have been demolished.[93] Their owners have received the same standard compensation.

283. According to numerous evidence, including video footage, the police has been actively involved in forced evictions.[94]

284. On 12 August 2011, the building in which several human rights organisations, including the well-known Institute of Peace and Democracy, were located, was bulldozed. We spoke to Ms Leyla Yunus, a human rights activist who has long campaigned against forced evictions. We were told that the staff had not been allowed to evacuate material (computers, etc.). Ms Yunus estimated the office's market value at US$625 000, whereas the authorities emphasise that her own apartment, together with the IPD office space, totalled 85 m2, thus her financial demand exceeds US$7 300 USD per m^2. She said that she had not received any eviction notice. Moreover, in February 2011, she filed a suit against the city and received an injunction in May from a local economic court, halting any demolition work while the case was proceeding. In other words, the forced eviction contravened the court's decision. However, Ms Yunus has not yet continued her individual claim under civil law.

7.7. Freedom of conscience and religion

285. According to official figures, out of a population of 9 million, approximately 97% are Muslim. The remainder of the population consists mostly of Russian Orthodox, Armenian Orthodox, followers of other Christian groups, Jews and non-believers.

286. The Constitution of Azerbaijan guarantees religious freedom. However, some concern is raised by other laws and implementing policies which may restrict the freedom of conscience and religion.

287. Restrictive conditions concerning religious communities were reinforced on the occasion of the adoption, in May 2009, of amendments to the law on freedom of religion. The amendments introduced the requirement for religious communities to re-register as a condition for further activities and functioning. Furthermore, higher fines can be imposed on foreigners or stateless persons who disseminate religious propaganda, as well as on persons who carry out religious activities at any address other than that registered by their religious community; who publish, import or export religious literature without first obtaining the authorisation of the State Committee for Relations with Religious Organisations, who distribute religious literature without authorisation, who sell religious literature outside authorised premises or who engage in proselytising activities not provided for in the statutes of their religious community.

288. In its last report on Azerbaijan, ECRI expressed serious concern about this situation, stressing that it was incompatible with the case law of the Court and in particular with the decisions in the case concerning the practice of religious activities on private premises and prior restrictions on publication, as well as the distinction drawn by the Court between bearing religious witness and improper proselytism.

289. The requirement for re-registration of all religious groups, regardless of the previous status of registration that came into force in 2010, was easily fulfilled by some groups. However, other groups were denied registration and left in limbo. This was particularly the case of some communities of Jehovah's

91. Article 29(4) of the constitution provides for the possibility of expropriation for State purposes only and following a decision by the Cabinet of Ministers. Such decision has never been made public.
92. Article 29(4) of the constitution.
93. See Human Rights House website.
94. Ibid.

Witnesses, Baptists, Seventh-day Adventists, the Fatima Zahra mosque, the Baku International Fellowship, the Baptist Church in Aliabad and the Cathedral of Praise; the Nehemiah and Pentecostal Churches have also been denied registration.

290. According to the figures provided by the Ministry of Justice, before the 2010 amendments entered into force, there were 534 registered religious communities.

291. As at December 2010, the State Committee reported that a total of 576 religious communities had been registered, of which 493 were Muslim, 9 Christian, 6 Jewish, 1 Hare Krishna and 1 Baha'I, and 17 were non-Muslim. Some groups are still completing the process. However, some communities complain that, despite repeated attempts to re-register, they have received contradictory replies. Seven groups have been denied re-registration. According to the case law of the European Court of Human Rights, any refusal to re-register communities which have already existed in the country for some time and have lawfully conducted their activities must be based on particularly weighty, compelling reasons.

292. Some communities that were denied registration have challenged this decision in the courts.

293. In December 2010, the parliament adopted a law which substantially increased the fines for violation of the laws on religious activities, including the importation of certain religious materials. Under the previous law, an individual found guilty of a single violation (producing, importing or distributing religious literature without approval from the State Committee and the sharing of "religious propaganda" by foreigners) would be fined 100 to 300 manat (approximately between €105 and €315). Under the new law, an individual convicted of the same violation will be fined 1 500 to 2 000 manat (approximately between €1 580 and €2 100).

294. The amendments to the national legislation, adopted in the course of 2011, led to a further tightening of the rules for founding a religious community and established mandatory reporting to the Caucasus Board of Muslims and the State Committee for Working with Religious Communities, which considerably increased the severity of possible sanctions. There are also burdensome registration requirements for religious groups. The Venice Commission's opinion was adopted in October 2012. We call on the Azerbaijani authorities to address the concerns and follow the recommendations contained therein.

295. At our request, the Monitoring Committee, at its meeting on 31 May 2012, decided to request the Venice Commission's opinion on the Law on Religious Freedom.

296. We have to acknowledge that we were impressed, during our visit in June 2012, when we met representatives of the major confessions in Azerbaijan (Muslim, Orthodox, Catholic and Jewish). According to them, the conditions for worship are fully satisfactory, and co-operation between the confessions is exemplary, which confirms the climate of religious tolerance prevailing in the country. They all emphasised that they are completely free to practice their religion and expressed their strong support for the policy of the Azerbaijani authorities with regard to the freedom of religion. They called on the European Union to focus on this specific aspect of Azeri society and to give clear support to Azerbaijan in order to encourage this policy of religious tolerance at the outskirts of Europe.

297. While the traditional religious communities do not face any major obstacles to exercising their faith, the authorities have reportedly monitored and raided some services and confiscated religious materials of small sectarian religious groups. The ongoing controversy regarding the official prohibition of wearing the hijab (veil) at school and the imprisonment of the leaders of the Islamic Party of Azerbaijan in 2011, may risk fuelling religious extremism in an otherwise tolerant society.

7.8. Alternative military service

298. Upon accession, Azerbaijan undertook to "adopt, within two years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors presently serving prison terms or serving in disciplinary battalions, allowing them instead to choose (when the law on alternative service has come into force) to perform non-armed military service or alternative civilian service".

299. There is an explicit provision in the Constitution of Azerbaijan stipulating that "If military service is contrary to a person's convictions, then, in cases provided for by law, an alternative form of military service may be permitted in place of regular military service" (Article 76, paragraph II). Unfortunately, the relevant law was never adopted.

300. A draft law has been prepared and the Venice Commission delivered an opinion on it in 2006. However, since then it has not been adopted.

301. The authorities have explained us during our visits that the delay had been caused by the unsettled conflict with Armenia over Nagorno-Karabakh. However, during the visit in June 2012, we were glad to hear that the law on alternative military service is being prepared.

302. We urge the authorities to adopt without further delay a law on alternative civilian service in compliance with Council of Europe standards and, in the meantime, not to prosecute or imprison those who refuse to perform military service for reasons of conscience and provide them with an opportunity to accomplish their duty to society in line with their conscience.

7.9. Protection of minorities, xenophobia and intolerance

303. Azerbaijan is a multiethnic and multicultural country. The main ethnic groups of the population are Azerbaijanis (91.6%), Lezgins (2.02%), Armenians (1.35%), Russians (1.35%), Talysh (1.26%), Avars (0.56%), and Turks (0.43%). Upon accession, Azerbaijan committed itself to adopt, within three years, "a law on minorities which completes the provisions on non-discrimination contained in the Constitution and the Criminal Code and replaces the presidential decree on national minorities".

304. Azerbaijan ratified the Framework Convention on the Protection of National Minorities (ETS No. 157) in June 2000 and since then it has been subject to the monitoring procedure of the Convention. The most recent report of the Advisory Committee dates back to 2008. The latest country report was presented in 2011.

305. The legal and institutional framework for national minority protection is very limited in Azerbaijan. The law on minorities, which constitutes one of Azerbaijan's commitments, has been a subject of public debate for several years but it has not been adopted to date and the Presidential Decree of 1992 on the rights and liberties on national minorities as well as Article 45 of the Constitution establishing the right to learn in minority languages remain the legal basis for minority policies.

306. Furthermore, there is no institutional structure to deal specifically and on a regular basis with issues related to the protection of national minorities. Neither is there a mechanism to enable consultation and effective participation of persons belonging to national minorities in decision-making on issues of relevance to them.

307. Policies in favour of national minorities and of activities of their organisations are scarce, despite some efforts to maintain national minorities' cultural monuments such as religious buildings. Moreover, there is no institutional system of allocation of support for minorities' organisations.

308. On the positive side, there has been progress in minority education, and there are schools with entire curricula in Russian and Georgian. Moreover, it is possible to study other minority languages as part of primary education in regions inhabited by minorities.

309. Persons belonging to national minorities are present in Azerbaijani political life including in elected bodies. However, reportedly, they have no means to effectively advocate minority interests and concerns.

7.10. The Ombudsman institution

310. The Constitutional Law "On the Commissioner for Human Rights of the Republic of Azerbaijan" was signed into law in 2002. The Ombudsperson is elected by the parliament from among three candidates put forward by the President of the Republic. Since the establishment of the Office, the post has been held by Ms Elmira Suleymanova, whom we have met on many occasions. There are four regional centres of the Commissioner's Office.

311. Apart from dealing with individual complaints with regard to human rights violations, the Commissioner may submit motions to the parliament with a view to revising legislation.

312. By the President's Order in 2009, the Commissioner has been designated to act as the national preventive mechanism against torture. He or she is entitled to pay regular visits to places of detention, isolation centres, investigatory isolators, penitentiary institutions, prisons and psychiatric institutions. The Commissioner publishes periodic reports on the findings[95] and submits proposals addressing identified concerns.

313. As mentioned above, the Commissioner is also responsible for co-operation on the implementation of the National Action Plan on Protection of Human Rights.

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95. Reports are available on the Commissioner's website.

Appendix 1 – Table of the legislation introduced by Azerbaijan relevant to the fulfilment of its commitments, as set out in Opinion 222 (2000) of the Parliamentary Assembly on Azerbaijan's application for membership of the Council of Europe

List of the commitments	Results achieved
i. as regards conventions: a. to sign, at the time of its accession, the European Convention on Human Rights as amended by Protocols Nos. 2 and 11 thereto, and Protocols Nos. 1, 4, 6 and 7;	Signed on 25 January 2001.
b. to ratify the Convention and Protocols Nos. 1, 4, 6 and 7 thereto during the year following its accession;	Ratified on 15 April 2002.
c. to sign and ratify, within one year of its accession, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its protocols;	Ratified on 15 April 2002.
d. to sign and ratify, within one year of its accession, the Council of Europe's Framework Convention for the Protection of National Minorities;	Ratified on 26 June 2000.
e. to sign and ratify, within one year of its accession, the European Charter for Regional or Minority Languages;	Signed on 21 December 2001 but not ratified.
f. to sign and ratify, within one year of its accession, the European Charter of Local Self-Government;	Ratified on 15 April 2002.
g. to sign and ratify, within two years of its accession, the European Outline Convention on Transfrontier Co-operation between Territorial Communities and Authorities and its additional protocols and the Council of Europe conventions on extradition, on mutual assistance in criminal matters, on laundering, search, seizure and confiscation of the proceeds from crime, and on the transfer of sentenced persons, and in the meantime to apply the fundamental principles contained therein;	The Outline Convention on Transfrontier Co-operation was ratified on 30 March 2004, the conventions on extradition in 2002, the convention on mutual assistance in criminal matters and its additional protocol as well as the convention on laundering, search, seizure and confiscation of the proceeds from crime on 4 July 2003 and the convention on the transfer of sentenced persons on 25 January 2001. The updated Convention on money laundering and financing of terrorism Convention (CETS No. 198) not signed.
h. to sign the European Social Charter within two years of its accession and ratify it within three years of its accession, and to strive forthwith to implement a policy consistent with the principles contained in the Charter;	Ratified on 2 September 2004.
i. to sign and ratify, within two years of its accession, the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption;	Ratified on 11 February 2004.
j. to sign the General Agreement on Privileges and Immunities of the Council of Europe and the additional protocols thereto at the time of its accession, and to ratify these within one year of its accession;	Ratified on 16 January 2002.
ii. as regards the resolution of the Nagorno-Karabakh conflict: a. to continue efforts to settle the conflict by peaceful means only;	Negotiations are carried out in the framework of the OSCE Minsk Group.
b. to settle international and domestic disputes by peaceful means and according to the principles of international law (an obligation incumbent on all Council of Europe member States), resolutely rejecting any threatened use of force against its neighbours;	

List of the commitments	Results achieved
iii. as regards domestic law: a. to revise legislation on elections, particularly the Law on the Central Electoral Commission and the Electoral Law, taking account of the recommendations put forward by the international observers during previous elections, so that the next general elections in autumn 2000 can confirm definitively the progress made and their results can be accepted by the majority of the political parties that will participate in the elections, and can be considered as free and fair by international observers;	The legislation on elections does not fully comply with Council of Europe standards. In its Opinion in 2008, the Venice Commission pointed to a number of concerns in the Electoral Code, in particular with regard to 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 procedure. In two consecutive resolutions on the functioning of democratic institutions in Azerbaijan, in 2008 and 2010, the Assembly called on the authorities to revise the relevant laws.
b. to amend, before the next local elections, the current legislation governing the powers of local authorities so as to give them greater responsibilities and independence, taking into account the recommendations made in this respect by the Congress for Local and Regional Authorities in Europe (CLRAE);	In 2003, the Congress adopted a number of recommendations addressed to the Azerbaijani authorities with regard to the introduction of new legislation concerning local and regional democracy. In 2009, the Congress expressed concern about the amendment of the Constitution in respect of the local democracy. The Venice Commission in 2009 expressed concern about the draft amendment to the law on the status of municipalities prepared to implement this constitutional change. In 2012, the Congress assessed that there had been no real progress in the implementation of the European Charter on Local Self-Government.
c. to continue the reforms aimed at strengthening the independence of the legislature vis-à-vis the executive, so that the former can exercise the right to put parliamentary questions to members of the government;	The right of the legislature to put questions to members of the government is provided for in the Constitutional Law on Additional guarantees of the right to address the “issue of confidence by the Milli Mejlis to the Cabinet of Ministers” adopted in 2001. However, as the Venice Commission pointed out in 2001, the adoption of the above constitutional law has not provided the parliament with the right to vote on no confidence in the Cabinet of Ministers.
d. to adopt, within one year of its accession, the Code of Criminal Procedure, taking account of the observations by the Council of Europe experts;	The Code of Criminal Procedure was prepared with the assistance of the Council of Europe experts, although not all their comments were taken into account.
e. to adopt, within one year of its accession, the law on the Ombudsman;	A law on the Ombudsman was adopted on 28 December 2001.
f. to adopt, within one year of its accession, a law on combating corruption and, within two years of its accession, a State programme on combating corruption;	A law on the fight against corruption was adopted on 13 January 2004. A National Strategy against corruption and an action plan for its implementation over the period from 2007 to 2011, prepared in co-operation with the Council of Europe, were adopted in July 2007 by a Presidential Decree. Azerbaijan has made significant progress in the criminalisation of corruption; however, according to the GRECO reports, further legal amendments are necessary, in particular with regard to the scope of definition of “official” and of “completed crime of bribery”.
g. to adopt, within two years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors presently serving prison terms or serving in disciplinary battalions, allowing them instead to choose (when the law on alternative service has come into force) to perform non-armed military service or alternative civilian service;	No law on alternative service has been adopted. A draft law has been prepared and was evaluated by the Council of Europe in 2006.
iv. as regards human rights and fundamental freedoms: a. to sign an agreement with the International Committee of the Red Cross (ICRC) guaranteeing unrestricted and unreserved access by the latter to prisoners;	Regular visits of detention facilities are organised by the International Committee of the Red Cross (ICRC).

List of the commitments	Results achieved
b. to release or to grant a new trial to those prisoners who are regarded as “political prisoners” by human rights protection organisations, especially Mr Iskander Gamidov, Mr Alikram Gumbatov and Mr Raqim Gaziyev;	The cases of those prisoners who were identified as political prisoners by the Secretary General’s independent experts back in 2001 and 2002-2004 (‘List of 716”) have been closed, as all these persons have been released or retried. Since then, the Parliamentary Assembly has raised the question of other alleged political prisoners in Azerbaijan in Resolutions 1547 (2007) and 1676 (2009). The report of the Committee on Legal Affairs and Human Rights on this subject will be debated in the Assembly during the January 2013 part-session.
c. to prosecute members of the law-enforcement bodies who have infringed human rights (particularly the prohibition of torture) in the course of their duties;	Torture and other ill-treatment remains an issue of concern in Azerbaijan. There have been alarming reports by human rights defenders, as well as domestic and international NGOs about alleged cases of torture and other ill-treatment at police stations, during the investigation period and in penal institutions. There are reports of the use of violence by the police against journalists documenting events. The investigations are in the majority of cases ineffective.
d. to guarantee freedom of expression and the independence of the media and journalists, and particularly to exclude the use of administrative measures to restrict the freedom of the media;	Freedom of expression raises serious concern in Azerbaijan. It is seriously jeopardised by State control of the broadcast media, limited diversity in the print media, criminalisation of defamation and the repressive use of defamation law, practices of unjustified or selective criminal prosecution of journalists or others who may express critical opinions and, above all, harassment and violence against critical journalists aggravated by the impunity of perpetrators.
e. to re-examine and amend the law on the media, within two years of its accession at the latest;	See comments above.
f. to turn the national television channel into a public channel managed by an independent administrative board;	The second State television channel (AzTV2) has been legally transformed into a public service broadcaster, but the first State television channel (AzTV1) still remains in State hands. The Parliamentary Assembly and institutions such as the OSCE Representative on Freedom of the Media and the OSCE/ODIHR in the context of elections, have pointed to the lack of independence of both these channels. Recommendations were made in June 2007 by Council of Europe experts to establish safeguards in legislation to secure such independence (see document ATCM(2007)11), but the Law on Radio and Television of Azerbaijan has not been amended.
g. to adopt, within three years of its accession, a law on minorities which completes the provisions on non-discrimination contained in the constitution and the penal code and replaces the presidential decree on national minorities;	No specific law on the protection of national minorities has been adopted yet.
h. to re-examine and amend, at the latest within one year of its accession, the rules governing registration of associations and appeals procedures.	The Venice Commission, in its opinion, has raised a number of concerns with regard to the law on NGOs.

Appendix 2 – Dissenting opinion by Mr Davit Harutyunyan (Armenia, EDG) and Mr Armen Rustamyan (Armenia, SOC), members of the Monitoring Committee[96]

Introduction

We disagree with certain conclusions and the wording used by the co-rapporteurs on Azerbaijan in the report, entitled «Honouring of obligations and commitments by Azerbaijan», particularly in the part referring to the Nagorno-Karabakh conflict, for the following reasons:

– the information presented in the report is one-sided;

– the information very often is echoing the Azerbaijani Government's propaganda;

– the wordings used are in contradiction with the ones agreed and used by the OSCE Minsk Group – the internationally recognised and the only mandated format to deal with the resolution of the Nagorno-Karabakh conflict.

For these reasons, the conclusions reached with regard to all aspects of the Nagorno-Karabakh conflict and related issues are misleading and do not reflect the situation on the ground.

Herewith are our objections with regard to the report and explanatory memorandum prepared by co-rapporteurs

Paragraph 5

Despite the current affairs debate on Safarov case held during the Assembly's Autumn 2012 part-session and unequivocal and harsh condemnation by the international community (including the President of the Parliamentary Assembly, the Secretary General of the Council of Europe, the Commissioner for Human Rights, the President of ECRI, etc.) of the outrageous actions of the Azerbaijani authorities with regard to the release and glorification of a murderer, the co-rapporteurs make one neutral sentence referring to this unacceptable and intolerable action of Azerbaijan. They also failed to note the abusive use by Azerbaijan of the Council of Europe Convention on the Transfer of Sentenced Persons.

Paragraphs 21 and 26

In these paragraphs, the co-rapporteurs used "ongoing conflict with Armenia over Nagorno-Karabakh". This wording is in contradiction with the agreed language within the Minsk Group of the OSCE, which is the only internationally recognised and agreed format to deal with Nagorno-Karabakh conflict.

The three principles for reference acknowledged by the Minsk Group of the OSCE and by default by all the member States of that organisation – the same States who are also members of the Council of Europe – are "the right to self-determination", "non-use or threat of use of force" and "territorial integrity".

The wording proposed by the co-rapporteurs reflects the position of the Azerbaijani authorities, which claim that the conflict is territorial. This claim is groundless, as the people of Nagorno-Karabakh has been exercising their right to self-determination and, as we mentioned above, this right is recognised by the Minsk Group and Azerbaijan itself (refer as an example to the OSCE Astana Ministerial Statement of 2010).

Besides, the conflict has three parties: Azerbaijan, Armenia and Nagorno-Karabakh, taking into consideration the fact that Armenia is "conditionally" party to the conflict having in mind the fact that the international community in general and the Parliamentary Assembly in particular asked Armenia "to use its considerable influence over the Armenians in Nagorno-Karabakh to foster a solution to the conflict" (see PACE Opinion 221 (2000) on Armenia's application for membership of the Council of Europe, paragraph 13.2 - b). The elected representatives of Nagorno-Karabakh signed the Ceasefire Protocol in 1994, in Biskek. If a peace agreement is reached, it shall be signed by the authorities of the Nagorno-Karabakh Republic.

The "Nagorno-Karabakh conflict" is the only term used by Co-Chairs of the Minsk group in all their communications and official statements. We believe that our Organisation should avoid any misrepresentation of agreed terms, particularly, when addressing complicated and highly political issue such as the Nagorno-Karabakh conflict.

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96. In accordance with Rule 49.4 of the Assembly's Rules of Procedure ("The report of a committee shall also contain an explanatory memorandum by the rapporteur. The committee shall take note of it. Any dissenting opinions expressed in the committee shall be included therein at the request of their authors, preferably in the body of the explanatory memorandum, but otherwise in an appendix or footnote").

References:

– Opinion 221 (2000)

– http://www.nkrusa.org/nk_conflict/documents.shtml#two

Paragraph 30

In this paragraph, the co-rapporteurs insist that "the international community, which is to be blamed for not fulfilling its own resolutions with regard to this conflict, is at the same time putting huge political pressure on Azerbaijan in some other fields". It unfortunately repeats the position of the Azerbaijani authorities, which try to justify their failure to implement their commitments with regards to human rights, the rule of law and democracy by using the conflict as a pretext. We think that the international community does not apply any pressure on the Azerbaijani Government that is uncalled for. In its Resolution of 1999 on support for the peace process in the Caucasus, the European Parliament states "whereas the strengthening of democracy and respect for human rights are prerequisites for a peaceful solution to the conflict in Nagorno Karabakh ...". The existence of a conflict cannot justify lack of progress in other fields. We believe that the co-rapporteurs of the Parliamentary Assembly should not follow the reasoning of the Azerbaijani Government but rather insist that no pretext can justify the failure to deliver on their commitments.

References:

– Opinion 222 (2000)

– http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1999:175:0251:0252:EN:PDF

Paragraph 31

In this paragraph the co-rapporteurs stated: "Eighteen years after the cease-fire agreement, no peaceful solution has been found: about 20% of the Azerbaijani territory, including the Nagorno-Karabakh region and seven surrounding districts, remains occupied. Some 900 000 people, that is 10% of the country's population, remain displaced, putting a heavy burden on Azerbaijan's economic and social situation[97]".

The question of the future status of the Nagorno-Karabakh and the state of surrounding territories is one of the core issues negotiated today on the basis of the Madrid principles as reflected in the L'Aquilla G-8 statement, and the consecutive G8 Summit Statements in Muskoka, Deauville and the G20 Statement in Los Cabos (by the Presidents of the United States, Russia and France). As the Council of Europe recognises the Minsk Group format and the negotiations within that format, the documents adopted in the Parliamentary Assembly should not be in contradiction, as it may harm the negotiations. Thus, describing the status or the state of the territories affected by the conflict, the co-rapporteurs should take into account that these issues are currently being negotiated, thus there is no definitive conclusions. As regards figures concerning territories, we recommend refraining from mentioning figures, as the numbers mentioned are far from the reality.

Moreover, paragraph 10 of the European Parliament Resolution of 20 May 2010 "On the need for an EU strategy for the South Caucasus" (2009/2216(INI)) is worth mentioning: "the position according to which Nagorno-Karabakh includes all occupied Azerbaijani lands surrounding Nagorno-Karabakh should rapidly be abandoned; ... an interim status for Nagorno-Karabakh could offer a solution until the final status is determined and that it could create a transitional framework for peaceful coexistence and cooperation of Armenian and Azerbaijani populations in the region." Moreover, it should be taken into account that the 1994 ceasefire agreement known as the "Bishkek Protocol" has been signed between all parties of the conflict: Armenia, Nagorno-Karabakh and Azerbaijan.

References:

– www.osce.org/mg/85838; www.osce.org/mg/91393; www.osce.org/mg/78195; www.osce.org/mg/69515;

– www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0193&language=EN&ring=A7-2010-0123

97. See Doc. 11196 [Reference made by co-rapporteurs].

The figures of displaced persons mentioned by the co-rapporteurs are absolutely baseless. But, in order to justify their claims, the co-rapporteurs make reference to Doc. 11196 on "Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions". We have several observations with this regard:

– No figures concerning displaced persons have been used in the Doc. 11196, which covers only issues related to missing persons.

– All international documents refer to UNHCR numbers, among them the above-mentioned European Parliament Resolution of 1999 "On support for the peace process in the Caucasus". In particular in paragraph B of the Resolution it is mentioned "whereas the war has caused serious humanitarian problems, in particular as a result of the displacement of more than one million persons from Armenia, Nagorno Karabakh and Azerbaijan". The Parliamentary Assembly documents on this issue are: Doc 7250 (1995) on the humanitarian situation of the refugees and displaced persons in Armenia and Azerbaijan (rapporteur: David Atkinson), Doc 9480 (2002) on the situation of refugees and displaced persons in Armenia, Azerbaijan and Georgia (rapporteur: Ruth-Gaby Vermot-Mangold), Doc. 10835 (2006) on refugees and displaced persons in Armenia, Azerbaijan and Georgia (rapporteur: Boriss Cilevičs).

References:

– http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1999:175:0251:0252:EN:PDF

– Doc. 9480

– Doc. 10835

Paragraph 34

In this paragraph, the co-rapporteurs are insisting that "mediation efforts have resulted in marginal progress in the investigation of the violation of the ceasefire agreement". The co-rapporteurs, who are well aware of the real situation, failed to note that the only impediment to the progress mentioned above is the officially stated refusal of Azerbaijan to create within the OSCE format the Line of Contact violations investigative mechanism. Azerbaijan is continuously resisting the efforts of the OSCE with regard to an expansion of the investigation mechanism, including by threatening to block the budget allocations (on this issue) for the Special Representative of the Chairman-in-Office of the OSCE on the conflict dealt with by the OSCE Minsk Group.

Paragraph 37

In this paragraph, the co-rapporteurs are insisting that "from the very beginning … the work of the ad hoc committee has been hindered by the lack of co-operation from the Armenian side". It is worth mentioning that the Armenian delegation participated in the first meeting of the ad hoc committee. The co-rapporteurs should have looked at the minutes of the first meeting held under the chairmanship of Lord Russell-Johnston. Even in the report submitted to the Bureau by Lord Russell-Johnston, there is no word about the non-attendance of Armenian delegations in the meetings.

Concerning the reconstitution of the ad hoc committee in 2010, the Armenian delegation declared its distrust of the real intention behind the reconstitution of the ad hoc committee in a letter addressed to the Bureau on 25 January 2010 [the letter is attached for the co-rapporteurs' consideration].

Paragraph 40

In this paragraph, the co-rapporteurs are noting that "Much of Azerbaijan's future democratic progress will depend on the success of a peaceful settlement of this conflict, which has so far held back Azerbaijan's internal development in the political, economic, institutional and social sectors".

The lack of progress in building a democratic society where fundamental human rights and freedoms are respected, where local democracy is established, where journalists are not imprisoned, where people are not put in jail for their political views and positions is the impeding factor for "Azerbaijan's internal development in the political, economic, institutional and social sectors". Aliev's regime prolongs the resolution of the conflict in order to use it as a consolidation mechanism and an oppression tool against any movements for democratic and social reforms. There are several cases of successful democratisation in States with conflicts (Cyprus, India, Northern Ireland, Israel, etc.). The proposed paragraph will be used as a good excuse for the Azerbaijani authorities to justify their continued failure to implement their commitments towards protection and

promotion of fundamental human rights, development of democratic institutions at all levels and upholding the rule of law. This position of the co-rapporteurs sustains the Azerbaijani regime and their current human rights record.

Paragraph 41

In this paragraph, the authors of the report are insisting that: “We noted, however, that the credibility of this format [OSCE Minsk group] is more and more contested.”

Incidentally, the co-rapporteurs failed to note that it is Azerbaijan which is continuously questioning the efficiency and credibility of the OSCE Minsk Group. This paragraph again reflects the position of the authorities of Azerbaijan who have tried to impose the idea of inefficiency of the international mediation efforts and therefore justify Azerbaijan’s strongly felt frustration. No country or organisation has ever contested the OSCE Minsk Group format, except Azerbaijan. Therefore, it is again regrettable that the co-rapporteurs are following the Azerbaijani Government’s lead, instead of being impartial and independent.

Paragraph 194

In this one line paragraph co-rapporteurs referred to the ECRI 2011 report on Azerbaijan and noted only that “It raised some concerns about freedom of religion”. Surprisingly, the concerns and recommendations contained in the reports of the ECRI on Azerbaijan have not found place in this paragraph. The co-rapporteurs failed to notice state-sponsored unprecedented growth of anti-Armenian sentiments in Azerbaijan, revealed by the ECRI report. In the light of the “Safarov case”, the display of xenophobia and intolerance is becoming more and more alarming in Azerbaijan, which should be properly reflected and addressed in the report of that country.