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The functioning of democratic institutions in Azerbaijan

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
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Summary:

With a view to the forthcoming general elections to be held in November 2015, the Monitoring Committee has looked into the functioning of the democratic institutions in Azerbaijan and assessed the state of implementation of the recommendations made by the Parliamentary Assembly in January 2013. It has focused, in particular, on questions relating to the system of checks and balances, the independence of the judiciary, as well as electoral matters. Alarmed by reports about the intensification of the practice of the criminal prosecution of NGO leaders, journalists, their lawyers and others who express critical opinions, the committee decided to look specifically into the state of implementation of paragraphs 18.2 and 18.4 of Resolution 1917 (2013).

While acknowledging the free, fair and transparent electoral process overall around election day in October 2013, the committee regrets the lack of implementation of some of the most important recommendations of the Venice Commission with regard to the election legal framework. Despite the efforts of the authorities, the committee notes the lack of independence of the judiciary, and expresses concerns over fairness of trials, equality of arms and respect for the presumption of innocence. While supporting the country's efforts to promote transparency and fight corruption, terrorism financing and money laundering, the committee calls for an adequate balance between the rights of association and freedom of expression, as guaranteed by the European Convention on Human Rights, and the State's legitimate fight against organised crime.

The committee expresses deep concerns over the crackdown on human rights in Azerbaijan, where working conditions for NGOs and human rights defenders have significantly deteriorated, and by the increasing number of reprisals against independent media and advocates of freedom of expression in Azerbaijan. It calls on the authorities to end this systemic harassment of those critical of the government. The committee welcomes the resumption of the activities of a Joint Working Group on Human Rights Issues following the agreement between the Council of Europe Secretary General and the President of the Republic of Azerbaijan in August 2014.

Taking these concerns and developments into account, the Assembly should call for the full implementation of the judgments of the European Court of Human Rights in conformity with the resolutions of the Committee of Ministers. It should also make a number of recommendations in the areas of the separation of powers, electoral processes, judiciary, freedom of expression and freedom of association.

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

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A. Draft resolution[2]

1. The Parliamentary Assembly acknowledges the complex geopolitical context of Azerbaijan as it tries to balance its relations with the European Union, Turkey, Iran and the other Caspian Sea neighbours, the Russian Federation and the United States. Azerbaijan has managed to maintain an independent and diversified foreign policy position, in particular due to its sizable energy resources and strategic location on the Caspian Sea. The Assembly is fully aware of the occupation by Armenia of Nagorno-Karabakh and seven other provinces of Azerbaijan, which dominates to a large extent the Azerbaijani foreign policy agenda.

2. The Assembly takes note of the authorities' concerns over the security and the stability of the country due to alleged threats from abroad, in particular the alleged risks to Azerbaijan from the situation in Ukraine. In this context, Azerbaijan is a particularly important country with its energy resources playing a pivotal role, particularly as the European Union is seeking to diversify away from Russian energy supplies, which has considerably strengthened Baku's strategic position in recent months.

3. The Assembly notes that the Azerbaijani institutional structure grants particularly strong powers to the President of the Republic and the executive. In addition to the limited competences of the Milli Mejlis under the Constitution, it draws attention to the fact that not all opposition forces are represented in parliament, which is detrimental to true political dialogue and effective parliamentary oversight. This is mainly due to the electoral system, which is a one-round majoritarian system, similar to that of the United Kingdom, which favours both the ruling party and independent candidates, and, moreover, as the opposition in Azerbaijan is very divided and opposition candidates are often competing against each other, they thus weaken each other. The Assembly is therefore convinced that it is in the best interests of the democratic process and the ruling party itself to confront opposition parties in a representative body, and calls on the authorities to develop an environment favourable to political pluralism and increased parliamentary control over the executive to guarantee checks and balances.

4. In November 2015, Azerbaijan will hold parliamentary elections. The Assembly regrets that some of the most important recommendations of the European Commission for Democracy through Law (Venice Commission), such as those regarding the composition of the electoral commissions and candidate registration, have not been addressed. It recalls that the authorities in charge of electoral administration should function in a transparent manner and maintain impartiality and independence. Effective remedies are essential to ensure trust in the electoral process. Whereas during the 2013 presidential election in Azerbaijan, the election observation delegations of the Parliamentary Assembly of the Council of Europe and the European Parliament observed "a free, fair and transparent electoral process overall around election day, improvements being still desirable with regard to the electoral framework", the Assembly, however, calls on the Azerbaijani authorities to take the necessary measures to avoid the shortcomings highlighted during previous elections, such as the adoption of court decisions that were not fully reasoned and had no legal basis and the lack of true judicial supervision.

5. The Assembly recalls that the independence of the judiciary is one of the basic preconditions of the separation of powers and of the system of checks and balances. It welcomes the recent legal amendments with regard to the judiciary, and in particular the new rule stipulating that judges must leave judicial tenure at the age of 65, and the removal of the former regulation allowing the extension of judicial tenure for some judges up to the age of 70. It nevertheless encourages the authorities to further ensure full independence of the judiciary and in particular prevent influence and interference by the executive branch. The Judicial Legal Council should be composed either exclusively of judges, or of at least a substantial majority of judges elected by their peers. The role of the Judicial Legal Council in the appointment of all categories of judges and court chairpersons should be further increased. Similarly, while acknowledging the recent legal amendments reducing the length of the probationary period for judges from five to three years, the Assembly recalls that the Venice Commission has constantly opposed probationary periods for judges and only tolerates them under strict conditions.

6. Despite these efforts, the lack of independence of the judiciary remains a concern in Azerbaijan, where the executive branch is alleged to continue to exert undue influence. Dubiously motivated criminal prosecutions and disproportionate sentences remain a concern. Fairness of trials, equality of arms and respect for the presumption of innocence are other major concerns. The Assembly is concerned about the use of pre-trial detention as a means of punishing individuals for criticising the government, as stated by the Court in the judgment in the case of *Ilgar Mammadov v. Azerbaijan*, in which it found a violation of Article 18 of the European Convention on Human Rights (ETS No. 5, "the Convention").

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2. Draft resolution adopted by the committee on 28 May 2015.

7. A slight decrease in the levels of corruption has been noted as a result of several important reforms and national and international state programmes. The Assembly welcomes the reduction of the level of corruption, especially in daily services provided by the network of public service halls known as ASAN centres. While supporting the country's efforts to promote transparency and fight corruption, terrorism financing and money laundering, the Assembly urges the authorities to create an adequate balance between the rights of association and freedom of expression, as guaranteed by the European Convention on Human Rights, and the State's legitimate fight against organised crime.

8. In the light of the above, the Assembly calls on the authorities to review the law on non-governmental organisations (NGOs) with a view to addressing the concerns formulated by the Venice Commission and creating an environment conducive to the work of civil society. It is indeed worrying that the shortcomings in the NGO legislation have negatively affected NGOs' ability to operate. The strict control of NGOs by State authorities is likely to interfere with the right to freedom of association guaranteed by Article 11 of the Convention. In this regard, the Assembly condemns the crackdown on human rights in Azerbaijan where working conditions for NGOs and human rights defenders have significantly deteriorated and prominent and recognised human rights defenders, civil society activists and journalists are behind bars. At the same time, the Assembly takes note of the adoption of the Law on Public Participation implementing public control over central and local executive powers and local self-governing bodies, ensuring the participation of civil society institutions in decision-making processes.

9. The Assembly is deeply concerned about the increasing number of reprisals against independent media and advocates of freedom of expression in Azerbaijan.

10. The Assembly is alarmed by reports by human rights defenders and international NGOs, confirmed by the Council of Europe Commissioner for Human Rights, about the intensification of the practice of the criminal prosecution of NGO leaders, journalists, their lawyers and others who express critical opinions, based on the use of alleged charges in relation to their work. The Assembly calls on the authorities to end the systemic harassment of those critical of the government. The Assembly welcomes the resumption of the activities of a Joint Working Group on Human Rights Issues, composed of representatives of civil society, prominent human rights activists, Council of Europe representatives, members of parliament and officials of the Presidential Administration, following the agreement between the Council of Europe Secretary General and the President of the Republic of Azerbaijan in August 2014.

11. Taking these concerns and developments into account, the Assembly calls on the Azerbaijani authorities to:

11.1. fully implement the judgments of the European Court of Human Rights, in conformity with the resolutions of the Committee of Ministers;

11.2. with regard to checks and balances, reinforce the actual application of the constitutionally guaranteed principle of the separation of powers, and in particular:

11.2.1. strengthen parliamentary control over the executive;

11.2.2. ensure full independence of the judiciary, in particular vis-à-vis the executive;

11.3. with regard to elections:

11.3.1. speed up the implementation of the outstanding recommendations of the Venice Commission and of the Committee of Ministers in its decisions on the execution of the judgments by the European Court of Human Rights in the Namat Aliyev group, in time for the forthcoming elections, and in particular:

11.3.1.1. take the necessary measures to resolve the problems revealed by the Court's judgments as regards the independence, transparency and legal quality of procedures before the electoral commissions;

11.3.1.2. further improve the system of control of the conformity of the elections in order to prevent any arbitrariness and allow for effective judicial supervision over the procedures;

11.3.1.3. continue the reforms of the composition of the electoral administration and candidates' and voters' registration, based on the recommendations of the Venice Commission and of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR);

11.3.1.4. finalise the ongoing reforms concerning party financing and in particular the financing of election campaigns, in line with recommendations the Group of States against Corruption (GRECO);

11.3.1.5. ensure that candidates are required to notify executive authorities only of their intent to hold a gathering;

11.3.1.6. make use of the Venice Commission's expertise in this field;

11.3.2. encourage a climate favourable to pluralism, free campaigning and freedom of the media for the November 2015 elections;

11.4. with regard to the judiciary:

11.4.1. ensure independence of the judiciary and judges and prevent and refrain from exerting any pressure on them;

11.4.2. further amend the legislation on the composition and powers of the Judicial Legal Council and the appointment of judges with a view to decreasing the influence of the executive, and in particular:

11.4.2.1. further ensuring that the Judicial Legal Council is composed either exclusively of judges or of a substantial majority of judges elected by their peers, giving more powers to the General Assembly of Judges;

11.4.2.2. consider removing the probation period for judges, or at least further decreasing its length based on objective pre-established criteria;

11.4.3. take the necessary measures to avoid criminal proceedings being instituted without a legitimate basis and to ensure effective judicial review of such attempts by the Prosecutor's Office, as well to prevent violations of the presumption of innocence by the law-enforcement authorities and members of the government;

11.4.4. take all necessary measures to guarantee due process and impartiality of the courts, in compliance with Article 6 of the European Convention on Human Rights;

11.4.5. take the necessary measures to ensure that pre-trial detention is not imposed without considering whether it is necessary and proportionate, or whether less intrusive measures could be applied;

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

11.4.7. refrain from exerting any pressure on lawyers defending NGO representatives and journalists;

11.5. with regard to freedom of expression:

11.5.1. create proper conditions for journalists to carry out their work and refrain from exerting any kind of pressure on them;

11.5.2. stop the reprisal of journalists and others who express critical opinions;

11.5.3. refrain from limiting freedom of expression and freedom of the media in both legislation and in practice;

11.5.4. speed up efforts towards the decriminalisation of defamation, in co-operation with the Venice Commission, to ensure that defamation cannot be associated with excessively high criminal sanctions, including imprisonment; and, in the meantime, use the existing legislation with caution to avoid prison sentences for such offences;

11.6. with regard to freedom of association:

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

11.6.2. create an environment conducive for NGOs to carry out their legitimate activities including those expressing critical opinions.

12. The Assembly resolves to closely follow the situation in Azerbaijan and to take stock of the progress achieved in the implementation of this and previous resolutions.

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

1. Introduction

1. With regard to the ongoing monitoring procedure, the last debate on the honouring of obligations and commitments by Azerbaijan took place in the Parliamentary Assembly in January 2013, and led to the adoption of Resolution 1917 (2013). The previous co-rapporteurs, Mr Joseph Debono Grech and Mr Pedro Agramunt, last visited Azerbaijan in May 2014, after which they issued an information note that was declassified on 25 August 2014.[3]

2. In January 2015, the Monitoring Committee appointed Mr Tadeusz Iwiński co-rapporteur in place of Mr Joseph Debono Grech. Considering that Mr Pedro Agramunt's mandate as co-rapporteur would shortly also be coming to an end, and in order to ensure the efficient handover of the file, we decided to immediately make a visit together as co-rapporteurs from 1 to 4 March 2015. The purpose of this visit was to assess the implementation of the recommendations made by the Assembly in January 2013. We decided to focus our visit on the fundamental question of the independence of the judiciary, which is one of the basic preconditions for the rule of law, as well as for the separation of powers and a functioning system of checks and balances. We also discussed issues related to elections, as Azerbaijan will be holding general elections in November 2015. We had been alarmed by reports from human rights defenders, domestic and international non-governmental organisations (NGOs) and international organisations about the alleged use of charges against activists and journalists – as well as their lawyers – who, in the eyes of many, qualify as political prisoners and prisoners of conscience. We therefore decided to look specifically into the state of implementation of paragraphs 18.2 and 18.4 of Resolution 1917 (2013).

3. In view of the developments in the country in the areas mentioned above, we decided to issue a report on the functioning of democratic institutions in Azerbaijan. In this report, we will look into the actual application of the principle of separation of powers, in order to understand the checks and balances in the country, and in particular the parliament's oversight function in a strong presidential system, the role of the opposition parties as well as the independence of the judiciary. With a view to the forthcoming general elections to be held in November 2015, a section will be devoted to the legal and institutional framework and practices in the electoral field. In this context, but also more broadly, we will look at the independence and functioning of the justice system, as well as pre-trial detention. The latest developments regarding freedom of expression and freedom of association will also be looked into. We will not go into the details of each and every individual case, but we find it very worrisome that at least 22 people are prisoners of conscience in Azerbaijan according to the reputed organisation Amnesty International.[4] The examples below are only mentioned to illustrate systemic problems. Furthermore, Mr Pedro Agramunt has been tasked by the Committee on Legal Affairs and Human Rights with preparing a report on "Azerbaijan's Chairmanship of the Council of Europe: What follow-up on respect for human rights?".

4. During our visit, we met a number of high officials, including the President of the Republic, the Minister of Justice, the Prosecutor General and the presidential administration. At the Milli Mejlis (parliament), we met the chairpersons of the Legal Policies State Structuring Committee and of the Human Rights Committee. We also had an exchange of views with the Azerbaijani delegation to the Parliamentary Assembly. The Council of Europe office in Baku kindly organised meetings with NGOs, representatives of the international community and lawyers of persons in detention. We would like to express our gratitude to the parliamentary delegation of Azerbaijan and its secretariat for the excellent organisation of the visit, as well as to the Council of Europe office in Baku for their help in arranging meetings. We are particularly grateful to the authorities for organising transport for us so we could visit detainees in Kurdakhani Prison and in Prison 13.

2. Recent developments

5. 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 situated between the Russian Federation, Iran and Armenia.

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3. AS/Mon (2014)17.
4. Amnesty International report of 4 March 2014, Guilty of Defending Rights: Azerbaijan's Human Rights Defenders and Activists behind Bars.

6. 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. In recent years, Azerbaijan has been able to maintain an independent, balanced and diversified foreign policy position because of its sizable energy resources and strategic location on the Caspian Sea.

7. Azerbaijan has developed diplomatic relations with key players like the European Union, the United States and Turkey. Relations with the Russian Federation have been prudent, with Azerbaijan refusing to join the Eurasian Union. At the same time, Azerbaijan expressed reservations about signing a Stabilisation and Association Agreement with the European Union.[5] Azerbaijan has requested a differentiation in the Eastern Partnership Programme, insisting on focusing its bilateral co-operation with the European Union on economic development, energy, communications and migration, possibly to the detriment of key elements of democracy, the rule of law and respect for human rights.[6] This policy seems to be intended to show Azerbaijan's neutrality in its relations with Russia and the West.

8. The Azerbaijani foreign policy agenda remains dominated by the occupation of Nagorno-Karabakh and seven other provinces of Azerbaijan by Armenia. This issue is being dealt with by Mr Robert Walter in his report for the Committee on Political Affairs and Democracy entitled "Escalation of tension in Nagorno-Karabakh and other occupied territories of Azerbaijan". We will not analyse the question of the implementation of the country's commitment in this regard in the framework of the present report.

9. Referring to the demonstrations which took place before the 2013 presidential election in Azerbaijan, our interlocutors appeared sensitive to any potential social tension and unrest. The examples of Georgia and Ukraine were given to us as reasons for an almost paranoid approach to internal stability and security.

10. Developments in Ukraine have also had an influence on Azerbaijan's relations with the West, by revealing the fragility of the energy security environment in Europe. Azerbaijan is a particularly important country in this respect, with its energy resources playing a pivotal role. The European Union is seeking to diversify away from Russian energy supplies via the "Southern Gas Corridor", which has considerably strengthened Baku's strategic position.

11. The European Union is Azerbaijan's main trading partner, accounting for around 42.4% of Azerbaijan's total trade.[7] In 2014, EU–Azerbaijan bilateral trade amounted to 16.7 billion euros.[8] The strategic partnership on energy is the backbone of the relationship. The EU project of creating a pipeline system carrying Azerbaijani hydrocarbon resources to Europe via Turkey emerged a decade ago, breaking the Russian monopoly over the export of Caspian energy resources and providing Europe with an important source of diversification through a "Southern Gas Corridor". When Azerbaijan became the only supplier of gas to the corridor, it promoted the Trans-Anatolian Natural Gas Pipeline (TANAP) as a substitute to the contested Nabucco project. TANAP would allow Azerbaijan and Turkey to gain control of the transit for Azerbaijan gas and gas from Central Asia, Iran and Iraq through Turkey. The joint EU–Azerbaijani Southern Gas Corridor project was officially launched in September 2014. Turkey inaugurated the works for the TANAP pipeline in March 2015. The EU countries expect this corridor to significantly decrease their dependence on Russian gas as it should cover 20% of the European Union's needs.

12. Azerbaijan's claims of a right to its own vision of the country's development have become particularly strong. This has resulted in a transformation of the nature of the relations between Azerbaijan and the West, with Azerbaijan moving from a position of applicant to a position of independent actor.

13. In this context, our high-level interlocutors explained to us that Azerbaijan has had to face numerous threats to its independence and that a sharp response had been needed to ensure the country's stability and security. They further insisted on avoiding potential crises and social tensions ahead of the first European Games to be held in Baku in June 2015. In this context, recent intensification of international criticism by western NGOs resulted in publications in April 2015 by the Azeri-Press Agency (APA) of a documented survey[9] blaming an external anti-Azerbaijan network and Armenian lobby which combined their efforts by artificially and maliciously exaggerating the issues of human rights, press freedom, corruption, etc., calling for a boycott of the first European Games. APA, voicing the official Azerbaijani standpoint, states that these

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5. While Azerbaijan has not signed an Association Agreement with the European Union, the country is moving ahead with a "Strategic Partnership for Modernisation (SPM)". The EU-Azerbaijan Visa Facilitation and Readmission Agreements entered into force on 1 September 2014.
6. www.contact.az/docs/2015/Politics/042100113352en.htm.
7. http://ec.europa.eu/trade/policy/countries-and-regions/countries/azerbaijan/.
8. http://eeas.europa.eu/enp/pdf/2015/azerbaijan-enp-report-2015_en.pdf.
9. http://en.apa.az/news/226342.

forces are realising the plan of politicising the first European Games, creating a one-sided vacuum of information, directing the attention of the international community to the internal affairs of Azerbaijan in a distorted way, forcing Azerbaijan to abandon its independent political course through pressure and threats that have already been used against some States and produced results. However, it is known who is carrying out such outrageous activities and by what means because other countries of the Commonwealth of Independent States (CIS) have been recently subjected to such campaigns organised by the western circles. Although the true motives of this activity are clear, these circles are strenuously trying to cover them and their intentions up through false claims. According to APA, the main motive of these foreign NGOs is to protect the members of the "fifth column", who are financed and instructed by Western and Armenian sources, and who have for many years been actively participating in the smear campaign against Azerbaijan, by flagrantly violating the laws of the country.

14. In particular, during our meeting with the authorities, we were reminded of the multiple threats faced by Azerbaijan. Referring to the attempt of the leader of the National Council of Democratic Forces, Rustam Ibragimbekov, of Russian nationality, to register as a candidate for the 2013 elections, and the negative influence of foreign interests channelled through NGOs' funding, the authorities referred to "attacks by foreigners, NGOs, media against a free country". In their opinion, the Council of Europe and other international organisations apply double standards against Azerbaijan whilst some other countries are much worse, notably Georgia where half of the previous government is in jail. During a meeting both co-rapporteurs had with Amnesty International, we were told, to our surprise, that these imprisoned Georgian former government officials are not to be considered as political prisoners.

3. Checks and balances

15. Azerbaijan is characterised by a strong executive branch. Although the principles of independence and separation of powers are enshrined in the Constitution, the institutional set-up grants strong powers to the President of the Republic.[10] The other two branches of power – the judiciary and the legislature – are comparatively weak. The pillars that perform the watchdog functions (civil society, media and political parties) are also weak. The institution of Ombudsman does not enjoy much independence. According to the Group of States against Corruption (GRECO), in its evaluation report of the fourth evaluation round,[11] "the institutional set-up grants particularly strong powers to the President and the executive, who exercise considerable influence on the legislature and the judiciary, including the Prosecutor's Office. This environment lacks transparency and is prone to political favouritism and corruption". Transparency International's report,[12] however, defines the capacities of government institutions, including human, technical and financial resources and strong legal framework as the major strength of the National Integrity System of Azerbaijan. It also indicates that "in recent years, the government launched a number of important programs that are already yielding first results. Thus between 2011 and 2014, Azerbaijan saw a reduction of the level of corruption, especially in daily services provided by the network of public service halls known as ASAN centres, the introduction of the system of electronic services and single government e-portal, as well as improved business start-up procedures and enhanced practices of recruitment to civil service".

16. The President of Azerbaijan, Mr Ilham Aliyev, is both Head of State and Head of the executive power. He has been in office since 31 October 2003. He was re-elected on 15 October 2008 with 88.7% of the votes and in 2013 with 85% of the votes, securing a third five-year term of office. The President is eligible for unlimited terms, which was considered by the European Commission for Democracy through Law (Venice Commission) as "a step back, in terms of democratic achievements".[13] It should be noted, however, that unlimited re-election of the head of State or the head of government also exists in many Council of Europe member States. The President enjoys lifetime immunity from criminal prosecution.

17. The President's powers are enumerated in a very long list in Article 109 of the Constitution. *Inter alia*, the Constitution empowers the President to appoint and dismiss the government; the President is the guarantor of the independence of the judiciary; he submits the budget to the Milli Mejlis; he "makes the

10. Article 109 of the Constitution.
11. Greco Eval IV Rep (2014) 2 E, Fourth Round Evaluation Report on Azerbaijan adopted on 10 October 2014 and published on 2 April 2015.
12. www.transparency.org/whatwedo/publication/azerbaijan_national_integrity_system_assessment_2014.
13. CDL-AD(2001)026, Opinion on the Draft Constitutional Law of the Republic of Azerbaijan on "Safeguards for the Vote of Confidence to the Cabinet of Ministers by the Milli Mejlis", adopted by the Venice Commission at its 49th Plenary Meeting (Venice, 14-15 December 2001), paragraphs 15 and 23; CDL-AD(2009)010, Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009), paragraph 13.

submission" to the Milli Mejlis regarding the appointment and dismissal of judges of the Constitutional Court, the Supreme Court and the appellate courts; he appoints judges to other courts; he appoints and dismisses the General Prosecutor with the consent of the Milli Mejlis; he makes submissions to the Milli Mejlis regarding the election of the Human Rights Commissioner of Azerbaijan; he resolves other issues not under the responsibilities of the Milli Mejlis of the Republic of Azerbaijan and of the judiciary (paragraph 32 of Article 109).

18. The National Assembly is a unicameral body consisting of 125 members, elected according to the majority system for a five-year term. The last parliamentary elections were held on 7 November 2010. The ruling party obtained 73 seats. The final results gave 71 seats to the New Azerbaijan Party (Yeni Azerbaijan) and 41 to independent candidates. The Motherland Party took two seats. The remaining 11 seats went to nine opposition parties. The Musavat Party and the Party of the People's Front of Azerbaijan failed to win parliamentary representation. This is mainly due to the election system which is a single-round majoritarian system, similar to that in the United Kingdom, which favours both the ruling party and independent candidates; moreover, as the opposition in Azerbaijan is very divided and opposition candidates are often competing in the same constituency, they thus weaken each other. According to the Central Elections Commission (CEC), the voter turnout was 50.1%. The next elections are planned for 1 November 2015 (see section on elections below).

19. With regard to the Constitution, we are concerned by the limited competences and actual powers of the Milli Mejlis.

20. According to the Constitution,[14] in the case of a legislative initiative by bodies other than the members of parliament – the President of the Republic, the Supreme Court, the Prosecutor's office, the Nakhchivan Autonomous Republic Supreme Council or a group of 40 000 citizens eligible to vote –, bills can only be modified with the consent of the body enjoying the right of legislative initiative, and are subject to vote within two months (or 20 days in urgent cases), while other bills have to be adopted within six months (Article 20 of the Rules of Procedure Law). We expressed concern about the substantial limitation of the Milli Mejlis's legislative functions deriving from these provisions.[15]

21. There are a number of constitutional provisions relating to the requirement that the parliament consent to various appointments to senior executive and judicial positions.[16] As highlighted by the Venice Commission,[17] the parliament has in these cases no right itself to initiate anything and its powers extend no further than the giving or withholding of consent. In some cases, the refusal to give its consent can even be bypassed.[18] As did all our predecessors in their monitoring reports, we stress the need for increasing parliamentary control over the executive in order to guarantee checks and balances.

22. The main weakness of the Milli Mejlis is that the representation of not all opposition forces in parliament is detrimental to an effective parliamentary oversight. Parliamentary action by individual members is limited by the fact that the establishment of a parliamentary faction requires at least 25 seats (20% of the 125). In reality, parties other than the New Azerbaijan Party – the ruling party – are not able to form parliamentary groups.

23. Sharing these concerns, we would like to recall that it is in the best interests of the democratic process and the ruling party itself to confront all opposition forces in some representative body and allow for true political dialogue in the parliamentary framework. It is important to develop an inclusive political system and an

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14. Article 96 I, II, III, IV.
15. In paragraph 22 of its Fourth Round Evaluation Report on Azerbaijan, Greco Eval IV Rep (2014) 2 E, op. cit., GRECO recommended the abolishment of these rules.
16. The parliament must consent to the appointment and removal by the President of the Prime Minister (Article 109 (4) and 128.V). Judges of the Constitutional Court, the Supreme Court and the courts of appeal are appointed by the parliament on the proposal of the President (Articles 130.II, 131.II and 132.II). The parliament can remove the President by impeachment but only on the recommendation of the Constitutional Court (Article 95 (12)). The parliament can remove judges from holding positions for various reasons on the proposal of the President (Article 95 (13)). Similarly, the parliament can appoint and remove members of the National Bank (Article 95 (15)) on the proposal of the President. The General Procurator is appointed and removed by the President with the consent of the parliament (Article 133.III). Article 114 expressly provides that the President form the Cabinet of Ministers, which is the supreme executive organ, subordinate and accountable to the President. Article 109 (5) provides that the President appoint and remove from their position members of the Cabinet of Ministers. There is no provision requiring the consent of parliament either for the appointment or removal of the Cabinet.
17. CDL-INF(2001)026, Opinion on the Draft Constitutional Law of the Republic of Azerbaijan on "Safeguards for the Vote of Confidence to the Cabinet of Ministers by the Milli Mejlis", op. cit.
18. The parliament must consent to the appointment by the President of the Prime Minister. According to Article 118.III of the Constitution, if they refuse to do so on three occasions the President may appoint a Prime Minister.

environment favourable to political pluralism.[19] We were informed by authorities that an initiative for political dialogue was already taken recently, but that non-represented opposition parties such as the Musavat Party and the Party of the People's Front have so far turned down this invitation.

24. The independence of the judiciary is yet another matter for concern, which will be examined in a separate section.

4. Elections

25. The Electoral Code of Azerbaijan is the main law addressing the electoral process in the country; however election-related issues are also regulated in the Constitution and in the law on public assemblies, legislation on mass media and the Code of Criminal Procedure.

26. In 2009, the Venice Commission adopted an opinion on the draft amendments to the Constitution of Azerbaijan,[20] which included, among the main issues raised by the reform, the aforementioned removal of the two-term limit on the election of the President[21] and the restrictions of basic rights and liberties, mainly concerning media freedom and the limitations imposed on journalists recording public meetings or meetings of public interest unless they have received express permission to do so. The amendments nevertheless entered into force in March 2009. It is important to note that none of the amendments to the Electoral Code adopted in 2010, 2012 or 2013 were submitted to the Venice Commission for opinion.

27. Concerning the Electoral Code, in March 2008, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) and the Venice Commission prepared a joint interim opinion on the draft amendments to the Code.[22] The Milli Mejlis adopted the amendments on 2 June 2008. Another Venice Commission and OSCE/ODIHR joint opinion was adopted in June 2008 on the adopted amendments to the Electoral Code.[23] Since then, the Electoral Code was further amended in June 2010, April 2012 and April 2013, but key issues were not tackled, in particular the reform of the composition of the electoral administration, which lacks independence.

28. In their previous report on "The honouring of obligations and commitments by Azerbaijan"[24] of 20 December 2012 the then co-rapporteurs expressed concern over the fact that previous Venice Commission's recommendations had not been addressed. The biggest concerns were about the composition of the Central Electoral Commission and territorial electoral commissions, candidate registration, observers, the electoral roll and its accuracy, as well as the complaints and appeals procedure. Since then, the electoral code has not been amended to improve the composition of the electoral administration and candidates' and voters' registration, despite the Venice Commission recommendations:

29. The Central Electoral Commission is appointed by parliament: one third of its members are proposed by the majority, one third by the minority and the last third by independent members of parliament. Although this could be seen as an appropriate system in theory, in practice, this formula provides pro-government forces with a decisive majority and results in a lack of commission members from the opposition.[25] By law, all chairpersons of all electoral commissions are nominated by the parliamentary majority. Constituency electoral commissions are appointed by the Central Electoral Commission, and precinct electoral commissions are appointed by the relevant constituency electoral commissions. In view of the above, the composition of the commissions is detrimental to the independence of the electoral administration and thus undermines confidence in the electoral process.

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19. See co-rapporteurs' statement of 8 May 2015.
20. CDL-AD(2009)010, op. cit.
21. See paragraph 21 above.
22. CDL-AD(2008)003, Joint Interim Opinion on the Draft Amendments to the Electoral Code of the Republic of Azerbaijan by the Venice Commission and OSCE/ODIHR adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008).
23. CDL-AD(2008)011, Joint opinion on the Draft Law on Amendments and changes to the electoral code of the Republic of Azerbaijan by the Venice Commission and OSCE/ODIHR, adopted by the Council for Democratic Elections at its 25th Meeting (Venice, 12 June 2008) and by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)
24. http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19243&lang=en, paragraph 94.
25. OSCE/ODIHR needs assessment mission report, June 2013. See also former election reports and joint Venice Commission and OSCE/ODIHR opinions issued in 2008, 2005, 2004 and 2003, in which it has been repeatedly stated, departing from the experience in past elections, commission members appointed by theoretically "independent" sections of the parliament or small parties tend, in reality, to vote in line with the governing party – see, among others, CDL-AD(2003)015, CDL-AD(2004)016rev, CDL-AD(2005)029 and CDL-AD(2008)011.

30. In previous Venice Commission opinions, it was repeatedly stressed that the requirements for candidacy should be reviewed, as some provisions are not sufficiently precise and some can be considered unreasonable restrictions. Transparency should be increased with regard to the registration process. The implementation of existing legal provisions on candidate nomination and registration should be improved by increasing the transparency of verification rules and procedures. Decisions to reject candidacies should be well-grounded and reasoned.

31. The European Court of Human Rights found a number of violations of the right to free elections (Article 3 of Protocol No. 1 to the Convention) of applicants who were members of the opposition parties or independent candidates in the framework of the 2005 parliamentary elections.[26] The Court ruled that the applicants' complaints and evidence had been dismissed without any legal reasoning; the statements and witness testimony against the applicants had been accepted without a proper examination to determine their truthfulness and credibility;[27] there had been a lack of independent examination and reasoning in the decisions cancelling the applicants' registration as candidates or their election; and there had been a lack of participation of the applicants in the hearing.[28]

32. The Court stressed the lack of an independent examination and proper reasoning by the election commissions and highlighted, more generally, that the authorities in charge of electoral administration should function in a transparent manner and maintain impartiality and independence from political manipulation. The importance of independence in the composition of electoral commissions has likewise repeatedly been highlighted by the Venice Commission,[29] which recommends that central electoral commissions include at least one member of the judiciary. These conclusions were subsequently reflected in the opinion of the Venice Commission[30] on the draft amendments to the Electoral Code of the Republic of Azerbaijan.

33. In its decision of 25 September 2014 on the execution of the judgments of the Court in the Namat Aliyev group of cases under supervision, the Committee of Ministers noted the clarifications given by the authorities regarding the expert groups set up in 2008 to assist those commissions, but considered, however, that this reform did not appear to resolve the problems revealed by the Court's judgments as regards the independence, transparency and legal quality of the procedure before these commissions. In its decision of 12 March 2015, the Committee of Ministers, relying on its numerous decisions since 2013 raising the same preoccupations in this group of cases as regards the independence, transparency and legal competence of electoral commissions, noted that the recent information provided was still limited to training for members of these commissions, and reiterated that such measures were not sufficient in themselves to solve the problems identified by the Court.

34. According to the Azerbaijani authorities, during the December 2014 municipal elections, 17 complaints were lodged with the Central Election Commission before the election day concerning 14 municipalities, and 12 complaints were upheld by the Commission, all relating to the registration of candidates. After the election day, the CEC allegedly received 79 complaints concerning 58 municipalities. The CEC allegedly annulled the voting results of 8 municipalities. We have not received from the authorities relevant detailed information on the processes of adjudication of complaints following the municipal elections of December 2014 and their outcome, and we are thus not in a position to assess possible improvements.

35. The authorities informed us that, based on the Code of Administrative Procedure that entered into force on 1 January 2011, the complaints against the actions (or omissions) or decisions of the election commissions shall be lodged with the courts of appeal (Chamber of Administrative and Economic Cases). We have not received information enabling us to properly assess the functioning of this new remedy.

36. In view of the imminence of the next legislative elections, in November 2015, it is of utmost importance to ensure that electoral commissions and courts are functioning properly with the capacity to review the legality of the decisions of these commissions. The authorities should work to further improve the system of

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26. *Namat Aliyev v. Azerbaijan,* Application No. 18705/06, judgment of 8 April 2010; *Abil v. Azerbaijan,* Application No. 16511/06, judgment of 21 February 2012; *Atakishi v. Azerbaijan,* Application No. 18469/06, judgment of 28 February 2012; *Hajili v. Azerbaijan,* Application No. 6984/06, judgment of 10 January 2012; *Kerimli and Alibeyli v. Azerbaijan,* Application No. 18475/06, judgment of 10 January 2012*; Kerimova v. Azerbaijan,* Application No. 20799/06, judgment of 30 September 2010; *Khanhuseyn Aliyev v. Azerbaijan,* Application No. 19554/06, judgment of 21 February 2012; *Mammadov No. 2 v. Azerbaijan,* Application No. 4641/06, judgment of 10 January 2012; *Orujov v. Azerbaijan,* Application No. 4508/06, judgment of 26 July 2011.

27. See, in particular, the Namat Aliyev and Orujov cases, ibid.

28. See, in particular, the Orujov case, op. cit.

29. CDL-AD(2002)23 rev, Code of Good Practice in Electoral Matters – guidelines – adopted on 18 and 19 October 2002.

30. CDL-AD(2008)011, op. cit.

control of the regularity of the elections in order to prevent any arbitrariness, by means of practical guidance from the Supreme Court and appropriate instructions to electoral commissions.[31] In this context, the authorities should make good use of the Venice Commission's expertise.

37. Based on the above, it appears that until now, several of the recommendations from Council of Europe bodies with regard to the legal and institutional framework and practices of elections have still to be addressed. The next general election is due to take place in November 2015. During our visit, we stressed the importance of ensuring compliance of legislation and practice with European standards as outlined in the Venice Commission's recommendations and in the Committee of Ministers' decisions on the execution of the judgments of the European Court of Human in this field, in time for the forthcoming elections.

38. In its second compliance report of the third evaluation round,[32] GRECO welcomed the efforts made in Azerbaijan to progressively improve public supervision of the financing of election campaigns, with the use of working groups involving specialists and civil society. The proposals to consolidate the supervision of political financing under the responsibility of the Central Election Commission constitute a step in the right direction, under the condition that it is given the appropriate powers and means to supervise effectively both party and election campaign financing, as well as guarantees of operational independence.[33]

5. The justice system

39. The independence of the judiciary is one of the basic preconditions of the separation of powers and system of checks and balances. Ensuring the independence of the judiciary vis-à-vis the executive branch is of the utmost importance.

5.1. The Judicial Legal Council

40. Article 8 of the Constitution of Azerbaijan designates the President of the country as the main guarantor of judicial independence. According to Article 1 of the Judicial Legal Council Act, the Council is the body which, within its field of competence, *inter alia*, ensures the organisation and operation of the court system and independence of the judges. According to Council of Europe standards, the independence of the judiciary should be safeguarded by a judicial self-governing body. Its composition, the selection of members and its functions should ensure its full independence and impartiality.

41. Since its establishment in 2005, the Judicial Legal Council had been chaired by the Minister of Justice. Based on the Judicial Legal Council Act, the Council is composed of 15 members, which include judges, representatives of executive and legislative authorities, the Prosecutor's Office and the Bar Association in the following manner: President of the Supreme Court of the Republic of Azerbaijan; one member (judge) appointed by the Constitutional Court of the Republic of Azerbaijan; two members (judges of the Supreme Court) appointed by the Supreme Court from among the candidates (at least two) nominated by the General Assembly of Judges; two members (judges of the courts of appeal) appointed by the Supreme Court from among the candidates (at least two) nominated by the General Assembly of Judges; one member (judge of the Supreme Court of the Nakhchivan Autonomous Republic (NAR)) appointed by the NAR Supreme Court from among the candidates nominated by the General Assembly of Judges; two members (judges of the first-instance courts) appointed by the Minister of Justice from among the candidates (at least two) nominated by the General Assembly of Judges; one member appointed by the President of the Republic of Azerbaijan; Minister of Justice; one member appointed by Milli Mejlis (Parliament) of the Republic of Azerbaijan; one member appointed by the Minister of Justice of the Republic of Azerbaijan; one member (lawyer) appointed by the Board of the Bar Association of the Republic of Azerbaijan; one member appointed by the General Prosecutor's Office of the Republic of Azerbaijan.

42. In a 2013 report[34] prepared in the framework of the Joint EU/Council of Europe Project "Enhancing Judicial Reform in the Eastern Partnership Countries", the Council of Europe experts noted that the General Assembly of Judges always had to recommend at least two candidates for one position and that the final choice was made by various bodies, one of which was outside the judiciary. Consequently, the selection of

31. Committee of Ministers' decision of 12 March 2015 in the framework of the supervision of the execution of the Namat Aliyev group of cases.
32. Greco RC-III (2014) 13E, second compliance report of the third evaluation round, adopted in October 2014 and published on 2 April 2015.
33. As required by Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns.
34. "Project Report on Efficient Judicial Systems", March 2013.

the majority of the members of the council did not rest with judges electing their peers but involved many bodies and institutions, comprised to a large extent by members of the executive. The experts concluded that "the system could be rendered much more transparent if the General Assembly of Judges were vested with the powers of election or appointment instead of being an advisory body empowered merely to propose candidates for a final determination to be made by different institutions residing in other branches of State power". This proposal was also presented to the Azerbaijan authorities in the framework of the enhanced supervision of the execution of the Court's judgments in the Namat Aliyev group of cases.[35]

43. In the Namat Aliyev group of cases, the Committee of Ministers invited the Azerbaijani authorities to take into account proposals to reconsider the role of the executive and of the Prosecutor General within the Judicial Legal Council, in particular in matters related to the nomination, promotion or disciplinary sanctions of judges, and to generally reinforce the role of the Council as regards the nomination and promotion of judges.

44. During our visit, we were informed by the Minister of Justice that amendments to the law had been adopted by parliament in December 2014 and promulgated by the President of the Republic in February 2015. As a result of these amendments, the two appellate judges will no longer be appointed by the Supreme Court and the two first instance courts will no longer be appointed by the Minister of Justice as all four will be elected directly by the Judicial Legal Council itself from a list submitted by the General Assembly of Judges. We take good note of these amendments and encourage the authorities to further ensure that the Council is composed either of judges exclusively or of a substantial majority of judges elected by their peers, and to further decrease the influence of the executive over the Council.[36] We reiterate the proposal made by other Council of Europe bodies to give more power to the General Assembly of Judges in this respect.

5.2. Appointment of judges

45. As seen above, the President of the Republic has an important role in the appointment of judges, including the appointment of the heads of the high judicial institutions: some of the appointments being solely within his competence. Traditionally, the appointment of the chairpersons of the Supreme Court, the Supreme Court of the Nakhchivan Autonomous Republic (NAR), courts of appeal and the Serious Crime Court have been within the sole competence of the President of Azerbaijan. We take good note of the information provided by the authorities[37] about the adoption of amendments to the laws on courts and judges and the Judicial Legal Council,[38] according to which the chairpersons of all courts, except the Supreme Court of the Republic of Azerbaijan and the Supreme Court of NAR, are now appointed by the President of Azerbaijan on the proposal of the Judicial Legal Council. The President of the Republic appoints all district court judges, on the recommendation of the Judicial Legal Council. The President recommends to the Milli Mejlis judges to be appointed to the Supreme Court of the Republic of Azerbaijan and the Supreme Court of NAR, to the Constitutional Court and the courts of appeal. In the NAR, judges are appointed by the President of the Republic on the proposal of the Chair of the Ali Mejlis (parliament) of that Republic. The judges of the NAR Supreme Court are appointed by the Milli Mejlis after presentation by the President of the Republic, based on a proposal by the Chair of the Ali Mejlis of the NAR.

46. While taking good note of the latest developments, we recommend that the role of the Judicial Legal Council in the appointment of all categories of judges and court chairpersons be further increased.[39]

47. The Judicial-Legal Council Act (Article 11) provides that the council is responsible for the initial selection of candidates for judicial office. Based on the outcome of the selection process, the Judicial Legal Council passes an appointment motion to the President (Article15 of the Law on the Judicial Legal Council), who appoints the judges (Article 109 of the Constitution). Based on a request addressed by the authorities of Azerbaijan to the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe, a CEPEJ expert team reviewed the system for the selection of judges in Azerbaijan[40] in September 2011.[41] The experts found that the selection system was based on objective criteria and was fairly transparent. According to their report, "in general, the model developed by the Azerbaijani authorities for the selection of

35. https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2680354&SecMode=1&DocId=2232316&Usage=2.
36. These are also recommendations of GRECO in its Fourth Round Evaluation Report on Azerbaijan.
37. Communication from the authorities concerning the Namat Aliyev group of cases against Azerbaijan in the framework of the CM supervision of the execution of judgments.
38. Promulgated by the President of the Republic on 11 February 2015.
39. This was also recommended by GRECO in its Fourth Round Evaluation Report on Azerbaijan.
40. The main bodies involved in the selection of judges in Azerbaijan are the Judicial Legal Council and the Judge Selection Committee formed by the Judicial Legal Council. The current procedure for the selection of non-judge candidates to judicial posts includes the following stages: test of legal knowledge (multiple-choice test); written

new judges can be regarded 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". Based on the evaluation of each candidate, the results are then submitted to the Council, which proposes to the President of the Republic of Azerbaijan their appointment to judicial positions.

48. The Minister of Justice assured us that there had been no single case of refusal to appoint the candidate nominated by the Council, and that the President had never used his power to influence the appointment of judges. However, European standards require not only compliant practice, but a corresponding compliant legislative framework.

5.3. Probationary period and judicial tenure

49. We were informed by the Minister of Justice that, on 30 December 2014, the parliament had adopted amendments to the Law on Courts and Judges[42] according to which the term of office for judges appointed for the first time would be three years, instead of the prior probationary period of five years. When the three-year term expired, the judges would, upon assessment by the Judicial Legal Council, be reappointed and would remain in office until the age of retirement – 68 years for judges of the Supreme Court and 66 years for all other judges. We take good note of the reduction of the length of the probationary period and encourage the authorities to further decrease it. We recall that the Venice Commission has constantly opposed probationary periods for judges because they endanger the judges' independence: it recommends that ordinary judges be appointed permanently until retirement.[43] Setting probationary periods can undermine the independence of judges, since they might feel under pressure to decide cases in a particular way.[44] Where an initial appointment period still exists, it should last for a relatively short period of time, and the assessment of the qualifications, skills and ability required to adjudicate cases by applying the law prior to making a lifetime appointment should be based on objective, fair, clear, pre-established and accessible criteria.[45] Based on the information available, we are not, at this stage, in a position to conclude that clear and pre-established criteria for the evaluation of judges for the purpose of their permanent appointment to judicial office exist.

50. The prior absence of a mandatory age of retirement for all judges fixed by law was criticised by the Council of Europe experts in the framework of the Joint European Union and Council of Europe Project "Enhancing Judicial Reform in the Eastern Partnership Countries".[46] We welcome the new rule and in particular the removal of the prior regulation and practice relating to the extension of judicial tenure for some judges from the age of 65 to the age of 70.

5.4. The role of the prosecution and the rights of the defence

51. Based on Article 133 of the Constitution and Article 4 of the Prosecutor's Office Act, the Prosecutor's Office oversees the execution and application of laws; it exercises criminal prosecution and carries out investigations; it represents the State in court and acts as plaintiff in civil, economic and administrative cases; it lodges appeal against court decisions. There are two categories of prosecutors: the prosecutors who lead the investigation into the criminal case and those who act as a public prosecutor, upholding public or semi-public charges in court. The Prosecutor's Office is part of the judicial branch of power and is construed as an independent authority.[47]

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examination (case-based); oral examination; initial training; written examination based on the training; oral examination based on the training; interview with the members of the Judge Selection Committee and final assessment; conversation with the Judicial Legal Council and proposal for nomination.

41. CEPEJ-COP(2011)1.
42. Promulgated by the President of the Republic on 11 February 2015.
43. See Report on the independence of the judicial system part I: the independence of judges, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010): www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-e.
44. CDL-AD(2014)031, opinion of the Venice Commission on the draft law on amendments to the organic law on general courts of Georgia, 10-11 October 2014, paragraph 13; CDL-AD(2010)028, Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, adopted by the Venice Commission on 15-16 October 2010, paragraphs 85-91; CDL-AD(2013)034, Opinion on proposals amending the draft law on the amendments to the constitution to strengthen the independence of judges of Ukraine adopted on 6-7 December 2013, paragraph 47; CDL-AD(2005)038, Opinion on draft constitutional amendments concerning the reform of the judicial system in "the former Yugoslav republic of Macedonia" adopted by the Commission on 21-22 October 2005, paragraphs 22-29.
45. Report on judicial appointments adopted by the Venice Commission at its 70th Plenary Session, CDL-AD(2007)028, paragraph 38 et seq.
46. Project report on Efficient Judicial Systems, op. cit.
47. GRECO 4th evaluation report, op. cit.

52. The President of the Republic has an important role to play in senior appointments within the Prosecutor's Office, either directly or indirectly. The General Prosecutor is appointed and dismissed by the President of the Republic, subject to the endorsement by the Milli Mejlis. His/her deputies, as well as the chief specialised prosecutors and the Chief prosecutor of the Nakhchivan Autonomous Republic, are appointed by the President of the Republic on recommendation of the Prosecutor General. Territorial and specialised prosecutors are appointed by the Prosecutor General with the consent of the President of the Republic.

53. The Prosecutor General is accountable to the Milli Mejlis and to the President of the Republic.[48] He/she informs annually the Milli Mejlis on the activities of the Prosecutor's Office, except for the criminal cases under investigation. The General Prosecutor confirmed to us that he reports to the President of the Republic regularly in addition to his annual reports, including on ongoing criminal investigations.

54. Based on the above, it is clear that the President of the Republic plays an important role in the appointment of the Prosecutor's Office. As underlined in GRECO's 4th evaluation report,[49] it is essential that in the performance of its duties the Prosecutor's Office is, and is actually seen to be, genuinely independent of the executive branch of power and that the influence on prosecutorial decisions by the executive is minimised. In this context, it is an additional matter of concern that in many cases, courts seem to be an extension of the Prosecutor's Office.[50] The high conviction rate in criminal cases is not good for the reputation of the judiciary; it indicates a prosecution-driven criminal system, where courts do not assess independently the evidence of the prosecution and do not take sufficiently into account the rights of the accused.

55. The issue of the fairness of trials, equality of arms and respect for the presumption of innocence was raised in our meetings with civil society, lawyers and individuals in detention. We were told about irregularities at the pre-trial stage and violations of the right of the defence during trials. In a number of cases against Azerbaijan, the European Court of Human Rights found violations of the requirements of Article 6 of the European Convention on Human Rights.[51] We were alerted by the lawyers we met that the environment for defence lawyers has deteriorated. It has reportedly become very difficult to ensure the defence of human rights defenders, journalists and NGO representatives due to strong pressure on their activities.[52] Some defence lawyers argue that they have been arbitrarily removed or debarred, others were called as witnesses in cases where they were representing the accused and consequently had to halt their defence. Others reported that criminal cases had been lodged against them. In this context, we refer to the report under preparation in the Committee on Legal Affairs and Human Rights on "Azerbaijan's Chairmanship of the Council of Europe: What follow-up on respect for human rights?", which is dealing with individual judicial cases.

56. In its judgment in the case of *Ilgar Mammadov v. Azerbaijan*,[53] the European Court of Human Rights explicitly stated the following: "In all their decisions in the present case, the domestic courts limited themselves to copying the prosecution's written submissions and using short, vague and stereotyped formula for rejecting the applicant's complaints as unsubstantiated. In essence, the domestic courts limited their role to one of mere automatic endorsement of the prosecution's requests and they cannot be considered to have conducted a genuine review of the 'lawfulness' of the applicant's detention. That is contrary not only to the requirements of Article 5 § 4, but also to those of the domestic law as interpreted and clarified by the Plenum of the Supreme Court. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was not afforded proper judicial review of the lawfulness of his detention. There has accordingly been a violation of Article 5 § 4 of the Convention." In its Interim Resolution[54] of 12 March 2015 on the execution of this judgment, the Committee of Ministers reiterated its call on the Azerbaijani authorities to provide, without delay, concrete and comprehensive information on the measures taken and/or planned to avoid criminal proceedings being instituted without a legitimate basis and to ensure effective judicial review of such attempts by the Prosecutor's Office, as well as to prevent new violations of the presumption of innocence by the Prosecutor's Office and members of the government. The Committee of Ministers reiterated its call on the authorities to ensure without further delay the applicant's release.

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48. Article 43 and 44 of the Prosecutor's Office Act.
49. Op. cit.
50. *Ilgar Mammadov v. Azerbaijan,* Application No. 15172/13, judgment of 22 May 2014: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144124#"itemid":["001-144124"].
51. See for example *Layijov v. Azerbaijan,* Application No. 22062/07, judgment of 10 April 2014; *Jannatov v. Azerbaijan,* Application No. 32132/07, judgment of 31 July 2014; *Insanov v. Azerbaijan,* Application No. 16133/08, judgment of 14 March 2013; *Efendiyev v. Azerbaijan,* Application no. 27304/07, judgment of 18 December 2014.
52. Report "Azerbaijan: Crackdown on human rights defenders intensifies as Baku Games approach", 21 April 2015, Observatory for the Protection of Human Rights Defenders.
53. *Ilgar Mammadov v. Azerbaijan*, op. cit.
54. CM/ResDH(2015)43.

57. Both the President and the Prosecutor General told us during our last visit that they did not accept the Court's judgment in the Ilgar Mammadov case, which they considered to be politically motivated. They maintained that his conviction in connection with the events in Ismayilli region in January 2013 by domestic courts was fully justified. We remind the authorities that the execution of the Court's judgment is mandatory under Article 46 of the Convention and we regret the decision of the Supreme Court taken on 13 January 2015 to postpone *sine die* the examination of Mr Mammadov's cassation appeal against his conviction.[55] The Committee of Ministers noted, in this regard, that the applicant's appeal was still pending before the Supreme Court, and expressed its deep concern about the fact that the Supreme Court had postponed its consideration *sine die*.

5.5. Pre-trial detention

58. The Code of Criminal Procedure provides for ten types of preventive measures that can be imposed pending trial, including remand in custody, which can be applied in case of specified existing risks.[56] When deciding upon the need for a preventive measure and choosing the type of measure to be applied, judges must take into account a number of elements that are enumerated in Article 155.2.[57]

59. As a general rule, the preventive measure of remand in custody can be imposed only on a person who is charged with an offence which carries a punishment of more than two years' imprisonment. The code distinguishes between two types of detention on remand: detention "pending investigation", that is, while the relevant prosecuting authority conducts a pre-trial investigation; and subsequent detention, while the case is being tried in court. In respect of persons accused of especially serious criminal offences, the maximum length of detention pending investigation cannot exceed 18 months from the moment of the arrest, including all possible extensions of the initial three-month period. The calculation of this total period of detention pending investigation takes into account any periods of actual detention, house arrest or stay in a medical facility. The running of detention pending investigation is stopped on the day the case is sent to the trial court or the day when the preventive measure of remand in custody is lifted. Concerning persons accused of "less serious criminal offences", the maximum length of remand in custody during the pre-trial period cannot exceed nine months from the time of the arrest, including all possible extensions of the initial two-month period. Under Articles 164.1 and 164.2 of the Criminal Procedure Code, release on bail can be ordered only as a substitute measure replacing a previously ordered remand in custody and on the basis of the detainee's request. Bail can be granted only in respect of persons accused of offences which do not pose a major public threat, less serious criminal offences, or serious offences committed negligently.

60. In its decision "on the application of the legislation by the courts during the examination of requests for the application of the preventive measure of remand in custody in respect of an accused" of 3 November 2009, the Plenum of the Azerbaijani Supreme Court instructed the courts to consider alternatives to detention on remand.[58] In the meantime, a new law clarifying norms of different legislative acts related to pre-trial detention was adopted in 2012.[59] In practice, judges order pre-trial detention in the vast majority of criminal proceedings without proper or adequate consideration for the grounds or whether less restrictive measures, such as house arrest or release on bail, would be sufficient.

61. In a number of judgments, the European Court of Human Rights found violations of Article 5 of the Convention.[60] For example, the Court ruled that there was a violation of Article 5.1 of the Convention due to continued detention without a judicial order for a time exceeding the 48-hour period prescribed by domestic

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55. Ibid.

56. Any preventive measure, including remand in custody, can be applied taking into account the existence of a risk that the accused may: (a) hide from the prosecuting authority; (b) interfere with the pre-trial investigation or trial by illegally influencing the parties to the proceedings or by tampering with or hiding the relevant evidence; (c) re-offend or pose a danger to the public; (d) fail to appear before the prosecuting authority without good reason or otherwise evade criminal responsibility and punishment; or (e) hinder the execution of a court judgment (Article 155.1).

57. (a) the nature and gravity of the criminal charge and circumstances in which the investigated offence was committed; (b) the accused's personality, age, health, occupation, and his or her family, financial and social situation; and (c) whether the accused has been convicted or subjected to preventive measures before, and other relevant circumstances

58. See the relevant part of this decision in paragraph 76 of the Court's judgment, op. cit.

59. Law on the Protection of rights and freedoms of detainees (22 May 2012, N 352-IVQ which entered into force on 11 July 2012).

60. *Farhad Aliyev v. Azerbaijan* Application No. 37138/06, judgment of 9 November 2010; *Salayev v. Azerbaijan* Application No. 40900/05, judgment of 9 November 2010; *Muradverdiyev v. Azerbaijan* No. 16966/06, judgment of 9 December 2010; *Rafig Aliyev v. Azerbaijan* Application No. 45875/06, judgment of 6 December 2011; *Zayidov v. Azerbaijan* Application No. 11948/08, judgment of 20/02/2014; *Novruz Ismayilov v. Azerbaijan* Application No. 16794/05, judgment of 20 February 2014; *Allahverdiyev v. Azerbaijan,* Application No. 49192/08, judgment of 6 March 2014.

law[61] and after the applicant's case file had been referred to the trial court and before this court had held a preliminary hearing.[62] The Court also found violations of Article 5.3 of the Convention due to the extension of pre-trial detention by extension orders containing no relevant or sufficient reasons.[63] In other cases, it ruled that there were violations of Article 5.4 due to the domestic courts' failure to carry out a judicial review of the extension of the detention that was not in conformity with the nature and scope required by Article 5.4.[64] In its judgment in the case of *Ilgar Mammadov v. Azerbaijan*,[65] the Court considered that the applicant had been detained for purposes other than having committed an offence and found a violation of Article 18 of the Convention taken in conjunction with Article 5. It stated that: "The above circumstances indicate that the actual purpose of the impugned measures was to silence or punish the applicant for criticising the Government and attempting to disseminate what he believed was the true information that the Government were trying to hide. In the light of these considerations, the Court finds that the restriction of the applicant's liberty was applied for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence."

62. In his third-party intervention in the case of *Rasul Jafarov v. Azerbaijan,*[66] the Commissioner for Human Rights reiterated that pre-trial detention should be the exception rather than the norm, as provided for by European and international standards, including Committee of Ministers Recommendation Rec(2006)13 on the use of remand in custody.[67] Non-custodial measures should be promoted such as bail, reporting to the police or other authorities, and submitting to electronic monitoring or curfews.

63. In this context, we refer to the report underway in the Committee on Legal Affairs and Human Rights on "Abuse of pre-trial detention in States Parties to the European Convention on Human Rights", which is focusing on this issue.

5.6. Presumption of innocence

64. In many cases against Azerbaijan,[68] the European Court of Human Rights found violations of Article 6.2 of the Convention with regard to the statements which had been made by law-enforcement authorities and their high-ranking officials or members of the government without the necessary qualifications or reservations and which contained wording amounting to an express and unequivocal declaration that the applicants had committed criminal offences. As such, they prejudged the assessment of the facts by the competent judicial authority and could not but have encouraged the public to believe the applicants guilty before they had been proved guilty according to law. In its decisions on the execution of the Court's judgments,[69] the Committee of Ministers expressed concern about the repetitive nature of the breach of the principle of presumption of innocence by high-ranking officials, despite several judgments of the Court which, since 2010, indicated the precise requirements of the Convention in this regard, and insisted on the necessity of rapid and decisive action in order to prevent similar violations in the future.

65. As already stated in the previous co-rapporteur's information note,[70] we expect the authorities to give Leyla Yunus a fair trial, in accordance with the European Convention on Human Rights. In this connection, we find it worrying that the day after her arrest the Prosecutor General's Office and the Ministry of National Security issued a joint press-release that presents her as guilty of the offences she is charged with.

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61. *Salayev v. Azerbaijan,* ibid.
62. Cases of *Fahrad Aliyev* and *Allahveriyev* v. Azerbaijan, op. cit.
63. Cases of *Fahrad Aliyev, Muradverdiyev, Rafig Aliyev, Zayidov, Novruz Ismayilov* and *Allahverdiyev v. Azerbaijan*, op. cit.
64. Cases of *Fahrad Aliyev, Rafig Aliyev* and *Novruz Ismayilov v. Azerbaijan*, op. cit.
65. *Ilgar Mammadov v. Azerbaijan,* op. cit., paragraphs 143-144.
66. *Rasul Jafarov v. Azerbaijan,* Application No. 69981/14.
67. https://wcd.coe.int/ViewDoc.jsp?id=1041281.
68. See for example *Ilgar Mammadov v. Azerbaijan,* op. cit.*; Fatullayev v. Azerbaijan,* Application No. 40984/07, judgment of 22 April 2010; *Mahmudov and Agazade v. Azerbaijan,* Application No. 35877/04, judgment of 18 December 2008; *Farhad Aliyev v. Azerbaijan,* Application No. 37138/06, judgment of 9 November 2010*; Muradverdiyev v. Azerbaijan,* Application No. 16966/06, judgment of 9 December 2010; *Huseyn and others v. Azerbaijan,* Applications No. 35485/05, 45553/05, 35680/05 and 36085/05, judgment of 26 July 2011.
69. For example in its decision of 4 December 2014 on the execution of the Court's judgment in the case *Ilgar Mammadov v. Azerbaijan.*
70. AS/Mon (2014) 17.

6. Freedom of association

6.1. NGOs legislation

66. The NGOs and lawyers we met complained of a serious deterioration in the situation since the 2013 presidential election. They reported that over recent years the authorities have introduced measures restricting NGO registration, their ability to operate within the law and their access to international funds.

67. During our meetings with the authorities, we were told that these measures were part of the State's efforts to increase transparency in the context of the country's fight against the financing of terrorism and money laundering.

68. In 2009, amendments to the law on NGOs were introduced which tightened administrative control of domestic and international NGOs. These amendments also introduced new registration requirements for foreign and international NGOs. According to the Venice Commission,[71] the legislation does not meet international standards. The most problematic aspects of the amendments pertained to the registration of NGOs generally; the registration of branches and representatives of international NGOs specifically; the requirements relating to the content of the charters of NGOs; and the liability and dissolution of NGOs. The Venice Commission concluded that the new NGO legislation had further added complications to an already complicated and lengthy procedure and that the specific requirements for the registration of international NGOs was in itself problematic. The Law on NGOs also posed problems of compatibility with Article 11 of the Convention with regard to the liability and dissolution of NGOs. In a number of cases, the European Court of Human Rights has found violations of the applicants' right of freedom of association[72] due to the repeated failure of the Ministry of Justice to make a final decision, or to respond within the statutory time-limits, on the applicants' requests for registration of their associations. In these cases, the Court found violations of Article 11 of the Convention based on the failure of the Ministry of Justice to register public associations in a timely manner or the unjustified dissolution of NGOs.[73] According to the Court, long delays in responding to applications for registration of association amount to *de facto* refusal to register the association.

69. In the meantime, new amendments to the law on NGOs were passed by parliament on 15 February 2013, introducing a new provision on donations and grants, as well as to other laws, notably the Law on Grants and the Code of Administrative Offences.[74] Another set of amendments to the Law on NGOs, as well as to the Law on Grants, the Law on Registration and the Code of Administrative Offences, was adopted by parliament on 17 December 2013.[75] Finally, a new set of amendments to the Law on NGOs, as well as to the Law on Grants, was adopted by parliament on 17 October 2014. On 14 November 2014, the President signed these amendments and issued two presidential decrees on their application. These amendments introduced additional administrative requirements with regard to the registration of NGOs as legal entities, the receipt and use of grants by these NGOs and their reporting obligations to the government. More generally, these amendments increased the control exercised by the Ministry of Justice over both Azerbaijani and foreign NGOs operating in the country. The recently adopted amendments also gave the government the discretion to dissolve, impose financial penalties on, and freeze the assets of NGOs for minor infractions of existing laws. The most significant changes relate to restrictions on NGO funding. After registration, NGOs have to comply with restrictive legislation regarding funding from abroad and are subject to tax inspection.

70. In practice, public associations can operate without legal personality, but the acquisition of legal personality is a precondition for various benefits. Most importantly, only registered NGOs can, on behalf of the legal personality, open a bank account, buy property, receive grants and enjoy tax preferences. Before these amendments entered into force, because of the difficulties and delays of the registration process or following the denial or revocation of their registration, a number of prominent human rights NGOs continued in practice to operate as unregistered NGOs. These NGOs either received donations in the name of their chairpersons in their private bank account or established partnerships with registered NGOs that could sub-grant them.

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71. Venice Commission, CDL-AD(2011)035, Opinion No. 636/2011 of 19 October 2011, "Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan" Adopted by the Venice Commission at its 88th Plenary Session (Venice 14-15 October 2011).

72. See, in particular, the following cases: *Ramazanova and others v. Azerbaijan* Application No. 44363/02, judgment of 1st February 2007; *Aliyev and others v. Azerbaijan,* Application No. 28736/05, judgment of 18 December 2008; *Ismayilov v. Azerbaijan* Application No. 4439/04, judgment of 17 January 2008; *Nasibova v. Azerbaijan*, Application No. 4307/04, judgment of 18 October 2007.

73. *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, Application No. 37083/03, judgment of 8 October 2009.

74. The amendments entered into force on 12 March 2013 upon their publication in the Official Gazette.

75. The amendments entered into force on 3 February 2014 upon their publication in the Official Gazette.

71. In order to close these loopholes, the March and December 2013 amendments extended the grant registration requirement to unregistered NGOs by requiring individual recipients of grants to register them with the Ministry of Justice. The amendments limited cash donations, required that all donations of a greater amount be made by bank transfer to an account held by the organisation itself and required these donations to be registered with the Ministry of Justice in order to qualify for tax exemption.

72. As a result of multiple legislative changes, a number of local and international human rights NGOs have allegedly been prevented from operating and carrying out their activities. Furthermore, NGO leaders of both registered and unregistered NGOs have been prosecuted for financial irregularities flowing from the failure to register grants with the Ministry of Justice, allegedly for embezzlement and tax evasion. A number of bank accounts had been frozen and many NGOs were under investigation by the tax authorities, their premises had been searched and equipment confiscated. A number of leaders of well-known NGOs have been charged with criminal offences such as tax evasion, illegal entrepreneurship and abuse of power.

73. The Venice Commission, the Commissioner for Human Rights and the Expert Council on NGO Law of the Council of Europe Conference of International NGOs have all taken the view that the Azerbaijani legislation on NGOs does not comply with international standards in respect of democracy and human rights.[76] In its 2014 opinion, the Venice Commission recommended that the registration process be simplified and decentralised and that the relevant provisions be amended to limit the grounds for refusal of registration to serious deficiencies. It regretted that NGOs could still be dissolved for misdemeanours which are not serious enough to justify the imposition of the most severe sanction. According to the Venice Commission, the requirement for international NGOs to create local branches and representations and have them registered should be reconsidered. New obligations imposed on NGOs with respect to the receipt of grants and donations and reporting to the State authorities seem to be intrusive enough to constitute a *prima facie* violation of the right to freedom of association.

74. While supporting the country's efforts to promote transparency and fight against terrorism financing and money laundering, we recall the importance of creating an adequate balance between the right of association as guaranteed by the European Convention on Human Rights and the State's legitimate need to fight organised crime. Based on the above, we encourage the authorities to review the law on NGOs with a view to addressing the concerns formulated by the Venice Commission, to improve and facilitate the registration procedures for NGOs, and to create an environment conducive for NGOs to carry out their activities.

6.2. Subsequent events

75. In May 2014, the Prosecutor General's Office launched criminal investigations in connection with the activities of dozens of NGOs (NGOs of the Azerbaijan Republic and offices and branches of foreign NGOs) relating to alleged irregularities flowing from the restrictions on NGO registration and grant reporting requirements. In this context, a number of NGOs – notably the Media Rights Institute, the Democracy and Human Rights Center, the Human Rights Union, the Azerbaijani Lawyers Association and the Institute for Reporters' Freedom and Safety – were subjected to measures such as raids, seizures, confiscations and blockage of bank accounts, with their representatives being subjected to interrogations and travel bans. Prominent lawyers, human rights advocates and human rights defenders have been arrested and charged in connection with violations in their NGO's activities. The number of such charges against human right defenders increased over the summer of 2014. During our visit, we were informed that the leader of Reporters' Freedom and Safety, Emin Huseynov, been given shelter at the Swiss Embassy in Baku since August 2014. A court decision was issued against him after he went into hiding, compelling him to present himself to the Prosecutor's Office.[77]

76. Following an agreement between the Secretary General of the Council of Europe and President Aliyev in August 2014, a Joint Working Group on Human Rights Issues, composed of representatives of civil society, members of parliament and officials of the Presidential Administration, was set up and has met three times.[78]

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76. Venice Commission, CDL-AD(2011)035, op. cit., paragraph 117; Venice Commission CDL-AD(2014)043, "Opinion on the Law on non-governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan", adopted by the Venice Commission at its 101st Plenary Session (Venice, 12-13 December 2014); Report of 6 August 2013 by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Azerbaijan from 22 to 24 May 2013 CommDH(2013)14; Report of 23 April 2014 of the Commissioner for Human Rights "Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property", CommDH(2014)10.

77. In its judgment of 7 May 2015 in the case Emin Huseynov v. Azerbaijan (Application No. 59135/09), the European Court of Human Rights found a violation of Articles 3, 5.1 and 11 of the Convention.

78. The last meeting was held on 9 April 2015.

77. We met with Rasul Jafarov at the Kurdakhani Prison during our visit. This lawyer and prominent human rights activist, who is the founder and Chairperson of the Human Rights Club, was arrested on 2 August, charged with illegal entrepreneurship, tax evasion and abuse of office, and subsequently, in December 2014, with additional charges including large-scale embezzlement and forgery. He explained to us that his NGO had never been registered by the Ministry of Justice, although he had applied three times and had lodged complaints to the Azerbaijani courts against the refusals, but his complaints were dismissed. An application is currently pending before the European Court of Human Rights. He explained that at that time, the law did not prohibit the activity of unregistered NGOs. The Human Rights Club had thus continued implementing projects and receiving grants openly. He had not received any donations for his NGO after 3 February 2014 which would have required registration under the new law (the last grant agreement was from July 2013). When requested, he had presented the financial documents to the Office of the General Prosecutor. Rasul Jafarov claimed that his arrest and detention were illegal and politically motivated. One and a half months after our visit, on 16 April 2015, Baku's Grave Crimes Court sentenced him to six and a half years in prison. Massive criticism was expressed by international organisations and INGOs over this sentence.[79] We reiterate our concerns about this sentence and call for Rasul Jafarov's release. The authorities should ensure that he benefits from a fair appeal procedure in full compliance with Article 6 of the European Convention on Human Rights.[80]

78. Intigam Aliyev – a well-known lawyer and human rights activist in Azerbaijan and Head of the Legal Education Society, who has represented many applicants before the European Court of Human Rights – was arrested in August 2014 and charged with illegal entrepreneurship, tax evasion and abuse of office and then charged also with large-scale fraud and embezzlement in December 2014. His defence team consider these charges to be fabricated and politically motivated. Although we were authorised by the authorities to meet with him during our visit to Baku, we could not see him in Kurdakhani Prison as we were informed that he was at that time at a hearing in court. In its Interim Resolution[81] of 25 September 2014 on the execution of the judgments *Mahmudov and Agazade v. Azerbaijan* and *Fatullayev v. Azerbaijan*, the Committee of Ministers "insisted, moreover, on receiving, without further delay, detailed information on all criminal charges pending against the applicant's representative [i.e. Intigam Aliyev] in the present group of cases, who is also the representative in several applications in the Namat Aliyev group of cases, equally under examination by the Committee, as well as in numerous applications currently pending before the Court in relation to freedom of expression". In his third party intervention before the European Court of Human Rights[82] in the case of *Intigam Aliyev v. Azerbaijan*, the Commissioner for Human Rights expressed concern over the seizure by the authorities of the files of cases pending before the Court, in the framework of the investigations against the applicants. Intigam Aliyev was sentenced to six and a half years in prison on 23 April 2015, less than a week after Rasul Jafarov, which was much criticised by the international community.[83] We expressed our deep disappointment over this harsh sentence and called on the authorities to redress the situation.

79. We also met with Anar Mammadli at the Prison 13. He is a well-known human rights defender specialising in independent election monitoring with his organisation the Election Monitoring and Democracy Studies Center (EMDS). He explained to us that EMDS had been denied registration five times before it had finally been registered – for a few months – in February 2008. In May 2008, its registration was revoked by the district court following an application of the Ministry of Justice. EMDS continued to operate without registration and carried out its election monitoring activities. Anar Mammadli was arrested on 16 December 2013 and convicted in May 2014 for illegal entrepreneurship, tax evasion, abuse of official authority in order to influence the results of an election, large-scale embezzlement and fraud, together with his colleague Bashir Suleymanli. They were respectively sentenced to five years and six months' and three years and six months' imprisonment. Bashir Suleymanli was released in March 2015 by the President of the Republic's pardon decree. Anar Mammadli explained to us that with the changes in the NGO legislation it was impossible for NGOs to operate because of the impossibility to register and the restrictive use of foreign funds. He claimed his innocence and stated that he was a political prisoner. During our discussions, he expressed concern over the side-effects of the attacks against human rights organisations; according to him, the destruction of human

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79. See among others, our statement and the statements by the Assembly's Committee on Legal Affairs and Human Rights, the European Union, Freedom House, Human Rights House, FIDH, OMCT, the United Kingdom, the United States and the Parliamentary Assembly of the OSCE.
80. http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5525&lang=2&cat=3.
81. CM/ResDH(2014)183.
82. CommDH(2015)6.
83. See amongst others, our statement and the statements by the Assembly's Committee on Legal Affairs and Human Rights, the European Union, Freedom House, Human Rights House, FIDH, OMCT, the United Kingdom and the United States.

rights NGOs by the authorities will result in a lack of credible alternatives and thus in an increase of Islamic movements. This worrying trend was also expressed by other NGO representatives in our meeting with civil society.

80. Despite our request, we were not allowed to meet with Leyla and Arif Yunus – founders and leaders of the NGO Peace and Democracy Institute (which operated since 2002 without registration) – who were still under investigation at the time of our visit. Leyla Yunus was arrested on 30 July 2014 and charged with treason, conducting illegal business, tax evasion, abuse of authority, fraud and forgery. She was remanded in custody. Arif Yunus was also charged with the same offences but was released under house arrest due to his poor health. On 5 August 2014, he was placed in pretrial detention. Both have serious health problems. We are also seriously concerned about the treason charges brought against Leyla and Arif Yunus. Treason is a very serious accusation, especially at a moment when tensions over Nagorno-Karabakh are mounting again. The Commissioner for Human Rights intervened in the proceedings of the European Court of Human Rights as a third party: he expressed concern over the arrest and detention of Leyla and Arif Yunus which he described as "an attempt to silence their efforts to report on human rights violations and [which] aims to prevent them from continuing their work, notably on the sensitive issue of the reconciliation of Azerbaijan and Armenia".[84]

81. Amnesty International[85] considers all the civil society activists mentioned above to be prisoners of conscience. There have been different lists of political prisoners and prisoners of conscience in Azerbaijan issued by civil society and opposition parties. These lists evolve constantly, with people being released thanks, *inter alia*, to presidential pardons, and new people being arrested and charged. During our visit, Amnesty International issued a report[86] according to which: "At least 22 people are in prison for lawfully exercising their freedom of expression, association or peaceful assembly. They are prisoners of conscience. Several face trumped-up charges of fraud, financial irregularities and abuse of power, while others have been falsely accused on drug-related offences."

82. In its resolution of 18 September 2014 on the persecution of human rights defenders in Azerbaijan,[87] the European Parliament reaffirmed its position that EU support for and co-operation with Azerbaijan, including the ongoing negotiations for a Strategic Modernisation Partnership, must be conditional on and include clauses relating to the protection and promotion of human rights, especially with regard to freedom of the media, including guarantees of Internet freedom and of uncensored access to information and communication, freedom of expression, freedom of association and freedom of assembly.

7. Freedom of expression

83. The representatives of the civil society and lawyers we met all expressed concerns about freedom of expression in Azerbaijan, in particular the practices of placing pressure on critical journalists and criminalisation of defamation. We were provided with a number of alarming reports about violations of freedom of expression by national and international watchdog organisations, including Reporters without Borders, Amnesty International, Human Rights Watch and the Human Rights House Foundation. Azerbaijani authorities are convinced that this huge increase of reporting activities by these same foreign NGOs are part of a master plan co-ordinated by these corporate foreign interests which only seek to destabilise the country. They referred to the Azeri-Press Agency (APA) which published confidential documents and correspondence by these NGOs, showing detailed timetables and concrete action plans[88] implementing "a black smear campaign against Azerbaijan" in view of both the upcoming European Games and the parliamentary elections in November 2015.

84. In its Interim resolution on the execution of the judgments of the European Court of Human Rights *Mahmudov and Agazade v. Azerbaijan* and *Fatullayev v. Azerbaijan,*[89] the Committee of Ministers reiterated "as regards the arbitrary application of criminal legislation to limit freedom of expression, that the present situation raises serious concerns, in particular on account of the reported recent use of different criminal laws – similar to the ones used in the present group of cases (accusations of illegal activities, abuse of authority, treason, hooliganism or other crimes which can have close links to the legitimate exercise of the freedom of expression) – against journalists, bloggers, lawyers and members of NGOs".

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84. CommDH(2015)10.
85. Report "Guilty of Defending Rights: Azerbaijan's Human Rights Defenders and Activists behind Bars", op. cit.
86. Ibid.
87. 2014/2832(RSP).
88. http://en.apa.az/news/226445.
89. CM/ResDH(2014)18, op. cit.

85. The legislative framework with regard to freedom of expression also raises some concern. Despite the opinion of the Venice Commission on Azerbaijan's legislation pertaining to the protection against defamation[90] and the observations of the Commissioner for Human Rights in this regard,[91] criminal sanctions for defamation, including up to three years' imprisonment have not yet been removed. In 2013, the government even extended the scope of legal sanctions for defamation to include expressions on the Internet. Civil defamation actions have resulted in high fines against media organisations. In its decision of December 2014 on the execution of the cases of *Mahmudov and Agazade* and *Fatullayev*, the Committee of Ministers reiterated their call on the authorities to ensure progress as regards defamation for the adoption of the necessary legislative amendments aimed at reducing the possibility of imposing prison sentences in defamation cases, on the basis of the proposal of the Plenum of the Supreme Court, and the elaboration of the larger draft "law on defamation", in close co-operation with the Venice Commission. In the meantime, the existing legislation should be used with caution to avoid prison sentences for such offences as proposed by the Plenum of the Supreme Court. Along the same lines, Assembly Resolution 2035 (2015) on protection of the safety of journalists and of media freedom in Europe, of January 2015,[92] urges the Azerbaijani Parliament to amend its legislation pertaining to defamation in order to bring it into line with Azerbaijan's obligations under the European Convention on Human Rights and with the legislative proposal made by the Plenum of the Supreme Court of Azerbaijan. It must be noted, however, that according to a report by the OSCE Representative on Freedom of the Media on "Libel and Insult Laws: a Matrix on where we stand and what we would like to achieve",[93] which contains a comprehensive data base on criminal and civil defamation provisions and court practices in the OSCE region, defamation is a criminal offence in 42 of the 47 member States of the Council of Europe, and in 39 member States this offence is punishable by imprisonment. In 2012, the Council of Europe published a study aimed at setting out the situation of the legislation on defamation in its member States, to make a global analysis in respect of these legislations and their application in the light of the relevant case law of the European Court of Human Rights.[94] The data collected on anti-defamation legislation in the member States reveals a constantly evolving situation. The overview of rules and practices with regard to defamation in all the member States reveals a heterogeneous situation, in which the decriminalisation of defamation is not a very reliable indicator with regard to the actual situation concerning the judicial harassment of journalists through defamation proceedings. Beyond the necessary decriminalisation of defamation, this highlights the paramount importance of implementing the principle of proportionality as conceived in the case law of the European Court of Human Rights. The alignment of rules and practices concerning defamation with the case law of the Court is a multi-faceted task, requiring the joint efforts of the legislature, the judiciary and the media.

86. We were informed that new amendments to the law on media and mass information were promulgated in February 2015, permitting Azerbaijan's Ministry of Justice to petition the court requesting closure of any media outlet that receives foreign funding or is found guilty of defamation twice.[95] In addition, in March 2015, the Azerbaijani Foreign Ministry approved the "Rules of accreditation of representatives of foreign mass media in Azerbaijan" that entered into force in April 2015. The accreditation rules provide that accreditation can be denied if foreign media representatives carry out any activity against the territorial integrity, independence and sovereignty of Azerbaijan, or visit the occupied lands of the country.[96]

87. We remain concerned about freedom of expression and freedom of the media in Azerbaijan, both in legislation and in practice, and call on the authorities to ensure compliance with Article 10 of the European Convention on Human Rights.

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90. Venice Commission, CDL-AD(2013)024, Opinion of the on Azerbaijan's legislation pertaining to the protection against defamation adopted by the Venice Commission at its 96th Plenary Session (Venice, 11-12 October 2013).
91. Report of 23 April 2014 of the Commissioner for Human Rights "Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property", op. cit.
92. http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21544&lang=en.
93. www.osce.org/fom/41958?download=true.
94. www.coe.int/t/dghl/standardsetting/media/cdmsi/CDMSI(2012)Misc11_en%20Defamation%20study.pdf.
95. www.rferl.org/content/azerbaijan-alieyv-law-on-mass-media/26829860.html.
96. www.contact.az/docs/2015/Politics/040900112111en.htm.

8. Concluding remarks

88. In order to prepare this memorandum, we carried out a fact-finding visit to Azerbaijan and met with various interlocutors from whom we gathered information. We studied the Council of Europe bodies' research, reports, recommendations and decisions with regard to Azerbaijan, in order to allow for a documented analysis based on solid sources. We also looked into the reports of other international organisations including renowned international human rights NGOs so as to corroborate the information.

89. During our visit, we heard from the authorities that Azerbaijan is threatened from all sides and that external and internal forces are trying to destabilise the country. The authorities insisted on the need to take measures to ensure the stability of the country, in particular with the prospect of the European Games to be held in Baku.[97] While understanding the authorities' concerns, we recall that "stability" should not be achieved at the price of damaging human rights standards and call on the authorities to further ensure respect for their obligations and commitments as a Council of Europe member State.

90. A stable democracy requires true separation of powers, with solid checks and balances. It is of utmost importance to allow for true political dialogue, including in the parliamentary framework. As illustrated above,[98] Azerbaijan would benefit from increased parliamentary control of the executive in order to guarantee checks and balances. This would require increasing the parliamentary functions and promoting the presence of a true opposition within the Milli Mejlis. We also noted some issues with regard to the independence of the judiciary (see below). We consider that a comprehensive review by the Venice Commission of the Constitution of Azerbaijan would be a valuable support for the authorities to address these shortcomings.

91. A stable democracy is achieved through free and fair elections in which there is a free confrontation of ideas. As developed above, it appears that until now, several of the recommendations from Council of Europe bodies with regard to the legal and institutional framework and practices of elections are still to be addressed. In particular independent and impartial complaint mechanisms should be guaranteed. The next general elections are due to take place in November 2015. Further progress should be made, based on the Venice Commission's recommendations and the Committee of Ministers' resolutions.[99] More generally, a climate favourable to democratic processes should be ensured throughout the electoral process, in particular with regard to freedom of expression and freedom of association.

92. A stable democracy requires respect for the principles of the rule of law. We looked into the question of the independence, impartiality and fairness of the justice system in Azerbaijan in connection with court cases against the media and NGOs and keeping in mind the concerns expressed by the Commissioner for Human Rights about "the selective criminal prosecution of journalists and others who express critical opinions".[100] The European Court of Human Rights considered the domestic courts as an extension of the Prosecutor's Office[101] and found violations of the equality of arms and of the presumption of innocence in a number of cases against Azerbaijan.[102]

93. A stable democracy requires a vivid civil society and a free media able to contribute to public debate. We reported above on the alleged repression of voices expressing criticism. The recent amendments to NGO legislation and its alleged arbitrary application indeed appear to be detrimental to the work of civil society and to have led to criminal proceedings against a number of leaders of well-known NGOs. Similarly, we are worried by the alleged arbitrary application of criminal legislation to limit freedom of expression.

97. Paragraph 13.
98. Paragraphs 15 et seq.
99. Paragraphs 25 et seq.
100. Paragraph 83.
101. Paragraph 55 et seq.
102. Paragraph 64 et seq.