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The functioning of democratic institutions in Azerbaijan

Addendum to the report[1]

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr Stefan SCHENNACH, Austria, Socialists, Democrats and Greens Group, and Mr Cezar Florin PREDA, Romania, Group of the European People's Party

1. Introduction

1. At its meeting on 7 September 2017, the Monitoring Committee approved a report and adopted a draft resolution on the functioning of democratic institutions in Azerbaijan with a view to its presentation at the October 2017 part-session. At that meeting, we announced that we would conduct a fact-finding visit to the country from 13 to 17 September 2017 and that we intended to present any developments in the country in an addendum to our report.

2. Discussions during the fact-finding visit were based on the draft resolution adopted by the Monitoring Committee and focused on issues related to the independence of the judiciary, the criminal justice system, conditions of detention, freedom of association and in particular the legislation on non-governmental organisations (NGOs). Talks also covered media freedom and the full implementation of judgments of the European Court of Human Rights. Meetings were held with the President of the Republic, the Head of his Administration and the Deputy Minister of Justice, the Speaker of Parliament and the Azerbaijani delegation to the Parliamentary Assembly, as well as with civil society, journalists, lawyers and families of persons in detention. Meetings were also held with so-called "political prisoners" in detention. The present addendum aims to take into account the most recent developments in the areas of relevance for our report.

2. Recent developments

2.1. Media freedom

3. Since the preparation of our report, there have been some worrying developments in the field of media freedom, as reported by the Council of Europe Platform to promote the protection of journalism and safety of journalists.[2] We discussed these issues during our visit and find it important to complete our report in this regard.

4. Prior to our visit, the Azerbaijani tax authorities opened a criminal investigation against Turan news agency for allegedly under-declaring profits, and tax officers raided Turan's office. The agency denied the allegations and referred the matter to the administrative court. In the meantime, Turan Director Mehman Aliyev was arrested, charged with suspicion of tax evasion and placed in three months' pretrial detention. Turan news agency announced that it would suspend its operations as a result of Mehman Aliyev's arrest and the agency's bank accounts being frozen. Ahead of our visit, Mehman Aliyev was released from custody and

1. Addendum approved by the committee on 9 October 2017.
2. www.coe.int/en/web/media-freedom/all-alerts?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_pos=3&p_p_col_count=6&_sojdashboard_WAR_coesojportlet_keywords=azerbaijan.

placed under police supervision while under investigation and prohibited from leaving Baku, and we were able to meet him in his office while in Baku. Since then, we have received contradictory information about the tax claim against Turan being dropped and/or reinstated and its assets being frozen and/or unblocked. All criminal charges against Mehman Aliyev must be lifted and all restrictive measures against the Turan news agency should cease. It is indeed essential that Turan news agency is able to work and contribute to media pluralism in the country.

5. We welcome the release of the Financial Director of the opposition newspaper *Azadliq*, Faiq Amirli, which took place during our visit. He had been charged with spreading national and religious hatred, along with "promoting religious sects" and "disturbing public order by performing religious activities", after police had allegedly found literature related to Fethullah Gülen in his car. He was sentenced to three years and three months in prison and fined 39 000 manats (€20 000). On 15 September 2017, the Baku Court of Appeal decided to release him and placed him on probation for three years.

6. After our visit, on 18 September 2017 the Sheki Court for Grave Crimes sentenced Elchin Ismayilli, founder and editor of *Kend.info*, an online news portal known for its reporting on corruption and human rights violations in the Ismayilli region of Azerbaijan, to nine years' imprisonment. As mentioned in our report, he was charged with extortion of money by threats, abuse of office and bribery.

7. On 9 September 2017, Baku Appeal Court confirmed the extension of the pretrial detention of the Director of Internet TV "Kanal 13" Aziz Orujov, whom we met in pretrial detention centre No. 1. He is recognised by Amnesty International as a prisoner of conscience.

8. We would like to reiterate that media and journalists should be able to carry out their activities freely without being subjected to intimidation or undue interference.

2.2. State of implementation of the Presidential Order of 10 February 2017

9. In our report, we welcomed the reform aimed at "humanising" the punishment system and avoiding unnecessarily harsh sentences and detention initiated by the President of the Republic's Executive Order of 10 February 2017. It is important that this order be now promptly and fully implemented. We therefore discussed with the authorities the next steps to be taken to ensure its implementation.

10. We were informed that draft laws regarding humanisation of sanctions – representing 300 legislative amendments – had been prepared by the Supreme Court, the General Prosecutor and the Ministry of Justice and submitted to the President. Draft amendments to the Criminal Code were transmitted to parliament in June 2017. They include provisions related to decriminalisation of 15 offences and increase the amount giving rise to criminal liability for three articles. New provisions are also foreseen to release from criminal liability persons who paid compensation to the State or the victim as well as persons with a drug addiction who submitted to treatment. Moreover, alternative sanctions to imprisonment are foreseen for 158 crimes and imprisonment is mitigated for 36 crimes. In addition, amendments to the Code of criminal procedure and to the Code of execution of sentences have been prepared that, *inter alia*, would allow electronic monitoring. It is expected that these amendments will be submitted to parliament in the near future. According to the government, the draft laws are expected to be adopted by the parliament during the autumn session.

11. According to the statistics provided by the authorities, the number of detainees held in pretrial detention facilities decreased by 25% between January and September 2017. Compared to the first nine months of 2016, the number of persons detained decreased by 24% in the first nine months of 2017.

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

12. Since the preparation of our report, the Committee of Ministers has taken new steps regarding the state of execution of judgments of the European Court of Human Rights by Azerbaijan.

13. On 13 September 2017, the Secretary General of the Council of Europe recommended that the Committee of Ministers trigger the Article 46.4 procedure with immediate effect regarding the judgment *Ilgar Mammadov v. Azerbaijan*. In their decision of 21 September 2017, the Ministers' Deputies instructed the Secretariat to prepare a draft interim resolution giving formal notice to Azerbaijan, as provided for under Article 46.4 of the European Convention on Human Rights (ETS No. 5), of the Committee's intention to bring before the Court the question whether Azerbaijan has failed to fulfil its obligation under Article 46.1 for consideration at their 1298th (25 October 2017) meeting, should no tangible progress be made in ensuring the applicant's release.

14. In the case *Rasul Jafarov v. Azerbaijan* also considered in our report, the Ministers' Deputies urged the authorities to pay without delay the remaining amount of just satisfaction, and to explore all avenues including a reopening of the impugned proceedings in order to erase the consequences of the violations found.

2.4. Other developments

15. A few days prior to our visit, 14 persons convicted in connection with the so-called Nardaran events were conditionally released. We will continue looking into this case during our next visits.

16. Conditions in the Gobustan prison are unacceptable. We recall that all prisoners – including those sentenced to life or serving their sentences under high-security conditions[3] – should be treated with the respect due to their inherent dignity and value as human beings. Long-term sentences call for special attention to the well-being of prisoners as deprivation of liberty entails a duty of care. These inmates should spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature. We ask the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to follow up on our findings during their next visits. While acknowledging the effects of the world economic crisis, we call on the authorities to speed up the construction of the new prison in Umbaki and to close down Gobustan prison. We looked into the specific situation of five prisoners. We express serious concerns about reports we received of ill-treatment and torture of prisoners, in particular regarding Abbas Huseynov. During the meeting with the prison authorities, the use of force in the framework of disciplinary measures against him was confirmed, which underpins the allegations of ill-treatment. These allegations need to be fully and transparently investigated by the authorities without delay and it should be made clear that there is no impunity for such acts.

17. We note with deep concern the reports issued after our visit about a crackdown on the lesbian, gay, bisexual, transgender and intersex (LGBTI) community. According to these reports around one hundred gay and transgender persons have been arrested by the police, and many ill-treated. We call on the authorities to investigate the actions of the police and reiterate the need to establish an independent and effective police complaints system. It is unacceptable for individuals to be targeted on the basis of their sexual orientation or gender identity.

3. Conclusion

18. Most of the developments outlined in this addendum do not require amendments to the draft resolution which accurately reflects the present situation. However, the information concerning media freedom and the recent releases, prompts the Monitoring Committee to table the following amendments to the draft resolution on the functioning of democratic institutions in Azerbaijan:

Amendment A

After paragraph 10, insert the following paragraph:

> *"The Assembly is also concerned by the reported massive arrests of gay and transgender people and allegation of ill-treatment by the police, and calls for independent effective investigations to be conducted into the actions of the police; the Assembly takes note of the release of these persons in the meantime."*

Amendment B

In paragraph 14, after the words "prisoners of conscience", insert the following words:

> *"including the latest releases of Mehman Aliyev and Faiq Amirli"*

Amendment C

At the end of paragraph 15.1, insert the following sentence:

> *"In this context, the Assembly takes note that the Committee of Ministers instructed the Secretariat to prepare a draft interim resolution giving formal notice to Azerbaijan, as provided for under Article 46.4 of the European Convention on Human Rights (ETS No. 5), of the Committee's intention to bring before*

3. For persistent violations of prison discipline a prisoner may be sent by court decision, on request by the prison administration, to a "prison regime" (served at Gobustan Prison) for a period of one to three years.

the Court the question whether Azerbaijan has failed to fulfil its obligations under Article 46.1 for consideration at their 1298th (25 October 2017) meeting, should no tangible progress be made in ensuring the applicant's release."

Amendment D

In paragraph 15.2, insert "Fuad Gahramanli and Aziz Orujov" at the end of the last sentence as follows:

"in particular but not exclusively Ilgar Mammadov, Ilkin Rustamzade, Mehman Huseynov, Afgan Mukhtarli, Said Dadashbayli, Fuad Gahramanli and Aziz Orujov."

Amendment E

At the end of paragraph 15.5.1, insert the following sentence:

"In particular, drop all criminal charges against Mehman Aliyev and those measures which also have an impact on the functioning of the Turan news agency"