



Resolution 2184 (2017)¹

The functioning of democratic institutions in Azerbaijan

Parliamentary Assembly

1. The Parliamentary Assembly welcomes both the readiness expressed by the Azerbaijani authorities to engage in reform processes in the area of human rights and the rule of law, and the ongoing dialogue with the authorities in the framework of the Assembly's monitoring procedure. However, it insists that this should lead to concrete results. The Assembly stands ready to provide support for the reform processes and their implementation in compliance with European standards.
2. The Assembly reiterates that respect for the principle of the separation of powers is essential and emphasises the need to develop the oversight function of the parliament over the executive in Azerbaijan. The Assembly shares the view of the European Commission for Democracy through Law (Venice Commission) that recent constitutional changes could make the executive less accountable to parliament.
3. The Assembly considers that the justice system in Azerbaijan must be genuinely independent, impartial and free from interference by the executive. As recommended and acknowledged by the Group of States against Corruption and the European Commission for the Efficiency of Justice, the extensive powers granted to the Judicial-Legal Council in matters related to the appointment, promotion and disciplining of judges are to be welcomed, but there are still concerns regarding the Judicial-Legal Council's composition and the fact that the executive branch continues to retain prerogatives for key senior appointments. While noticeable progress has been achieved regarding the appraisal, training and ethics of prosecutors, the Assembly remains concerned about the presidential oversight of the Prosecutor's Office. The Assembly welcomes the progress in the procedure for the selection of new judges through which 60% of the sitting judges have been selected.
4. The Assembly recalls that judicial independence and impartiality are prerequisites of a criminal justice system that is compliant with European standards. As underscored by the case law of the European Court of Human Rights (the Court), the Assembly notes with concern that much more effective measures have to be taken to strengthen judicial independence vis-à-vis the executive and the prosecutors. Shortcomings highlighted by the case law of the European Court of Human Rights concerning prosecutors' actions, endorsement by the courts of the prosecution's requests, ineffective investigations, non-respect of the presumption of innocence and inequality of arms have also not yet been addressed.
5. While welcoming the ongoing reform initiated by the President of the Republic's Executive Order on improvement of operation of the prison system, humanisation of criminal policies and extension of application of alternative sanctions and non-custodial preventive measures, the Assembly calls on the authorities to rapidly adopt and apply the legislation required for its implementation. The Assembly remains concerned about allegations of excessive use of pretrial detention, which should be the exception rather than the norm, and about the absence of alternative sanctions. Changes in practice will primarily depend on the level of judicial independence and changes in the way law-enforcement bodies work during investigations.

1. *Assembly debate* on 11 October 2017 (32nd Sitting) (see [Doc. 14403](#) and [addendum](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Stefan Schennach and Mr Cezar Florin Preda). *Text adopted by the Assembly* on 11 October 2017 (32nd Sitting).



6. The Assembly is concerned about the reported problem of arbitrary application of criminal legislation to limit freedom of expression, as highlighted by the Committee of Ministers in the framework of its supervision of the judgments of the European Court of Human Rights. Since 2013, several journalists and bloggers have been arrested on criminal charges (drug trafficking or hooliganism). There are groups of so-called “prisoners of Facebook”, young people who go to prison for criticising the policy of the authorities on Facebook.
7. The Assembly recalls its [Resolution 2178 \(2017\)](#) on the implementation of judgments of the European Court of Human Rights. It notes that more than 120 judgments of the Court against Azerbaijan have not yet or only partially been implemented. The Assembly notes that little progress has been made with regard to the implementation of certain groups of judgments, in particular concerning ill-treatment, violations of the right to a fair trial, freedom of expression and freedom of assembly and association.
8. The Assembly is concerned about repressive actions against independent media and advocates of freedom of expression in Azerbaijan. These actions are detrimental to effective media freedom and freedom of expression, undermine the safety of journalists and create a climate of violence against those who express divergent views. The Assembly is particularly worried about the recent amendments to the laws on internet regulation and court decisions to block websites, and recalls the need for protection of fundamental rights in the digital area. The Assembly deplores the recent legislative changes, including on criminal charges and prison sentences concerning defamation on social media, and reiterates its long-standing demand for decriminalisation of defamation.
9. While welcoming the measures foreseen by the Presidential Order for the improvement of conditions in detention and the 25% decrease in the number of pretrial detainees, the Assembly notes that prison overcrowding remains high and that living conditions in some prisons are still inadequate.
10. The Assembly takes note of the internal supervision mechanism of the Ministry of the Interior which has led, over the last five years, to disciplinary measures against 1 647 police officers, of which 156 were dismissed from the service, 139 demoted and 1 351 given warnings. The Assembly encourages the authorities to establish a gender balance also among police officers. It reiterates that an independent, impartial and effective complaints system for allegations of ill-treatment by law-enforcement officials is of fundamental importance for the enhancement of public trust in the law-enforcement bodies and in the Azerbaijani justice system in general. It stresses the need to ensure that there is no impunity for misconduct or ill-treatment. It is of utmost importance that all allegations of torture and ill-treatment are promptly and thoroughly investigated. In this context, the Assembly deplores that to date only four of the 10 reports on the visits of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) to Azerbaijan have been made public and that there are still six unpublished reports, concerning the periodic visits in 2011 and 2016 and ad hoc visits in 2004, 2012, 2013 and 2015. At the same time, it welcomes the authorities’ intention to make public the remaining CPT reports.
11. The Assembly is also concerned about the reported mass arrests of gay and transgender people and allegations 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.
12. The Assembly welcomes the law on the Ethics Code for Members of the National Parliament to prevent corruption, which provides measures on mandatory disclosure of conflicts of interests by members of parliament. However, the Assembly notes with great concern reports linking the Azerbaijani Government to a large-scale money-laundering scheme in place between 2012 and 2014, and used, *inter alia*, to influence the work of members of the Assembly as regards the human rights situation in Azerbaijan. The Assembly urges the Azerbaijani authorities to start an independent and impartial inquiry into these allegations without delay and, furthermore, to co-operate fully with competent international authorities and bodies on this issue.
13. The legislative environment for the operation of non-governmental, non-commercial organisations, including the regulation of matters relating to their State registration, funding and reporting requirements, has been restrictive and has been found not to be compliant with European standards by a number of Council of Europe bodies. The recent limited regulatory changes regarding grants do not fully address the legal barriers to the effective functioning and funding of non-governmental organisations (NGOs). Based on existing legislation and practice, a number of local and international human rights NGOs have been prevented from operating, put under pressure and sometimes placed under investigation. Some of the arrests, detentions and convictions of Azerbaijani human rights defenders appear to be the result of shortcomings in the NGO legislation and how it is implemented. In the light of the above, the Assembly welcomes the Presidential Order on the establishment of a single-window system for procedure of delivery of grants by foreign donors in the territory of the Republic of Azerbaijan, and calls on the authorities to continue to review the law on non-governmental organisations with a view to addressing the concerns formulated by the Venice Commission

and creating a better environment for NGOs to carry out their legitimate activities, including those expressing critical opinions. The Assembly welcomes the establishment of the Open Government Partnership dialogue platform in co-operation with the international community to strengthen co-operation, communication and partnership among State bodies and civil society organisations and contribute to further expansion of the Open Government Partnership principles and values in Azerbaijan. The Assembly calls on the authorities to invite all civil society organisations, NGOs and political parties to contribute to this platform. Recalling that NGOs enrich democratic processes, the Assembly calls on the authorities to facilitate and encourage their work. Open Government Partnership declared Azerbaijan's membership inactive for the second time in May 2016 over the government's treatment of civil society, urging Azerbaijan to address fundamental legislative and practical obstacles to the work of civil society organisations.

14. The Assembly is concerned about allegations of a restrictive climate for the activities of the extra-parliamentary opposition and limitations imposed on freedom of assembly. The legislation and practice governing public assemblies, which lacks foreseeability and precision, leads to public assemblies allegedly being banned, including the arbitrary arrest and detention of protesters, which has a negative effect on the exercise of the right to freedom of assembly.

15. While welcoming the release – sometimes through presidential pardon or judicial decisions – in 2016 and 2017 of some so-called “political prisoners”/“prisoners of conscience”, including the recent releases of Mehman Aliyev and Faiq Amirli, as well as the conditional release of 14 persons convicted in the so-called Nardaran case, which it considers a positive first step, the Assembly remains concerned about the reported prosecution and ongoing detention of NGO leaders, human rights defenders, political activists, journalists, bloggers and lawyers, based on alleged offences in relation to their work. The Assembly expresses its concern that new arrests following releases would diminish the positive signals given by the releases.

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

16.1. put an end to systemic repression of human rights defenders, the media and those critical of the government, including politically motivated prosecutions; allow for effective judicial review of such attempts; and ensure that the overall climate can become conducive to political pluralism ahead of the forthcoming elections in October 2018;

16.2. promptly ensure full implementation of the decisions of the European Court of Human Rights and co-operate more closely with the Committee of Ministers and the Department for the Execution of Judgments of the European Court of Human Rights. 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 of Ministers' intention to bring before the Court the question whether Azerbaijan has failed to fulfil its obligations under Article 46.1 for consideration at their 1298th meeting (25 October 2017), should no tangible progress be made in ensuring Ilgar Mammadov's release;

16.3. review the cases of the so-called “political prisoners”/“prisoners of conscience” detained on criminal charges following trials whose conformity with human rights standards has been called into question by the European Court of Human Rights, civil society and the international community, and use all possible means to release those prisoners whose detention gives rise to justified doubts and legitimate concerns, in particular but not exclusively, Ilgar Mammadov, Ilkin Rustamzade, Mehman Huseynov, Afgan Mukhtarli, Said Dadashbayli, Fuad Gahramanli and Aziz Orujov;

16.4. with regard to checks and balances, reinforce the application of the principle of the separation of powers, and in particular strengthen parliamentary control over the executive;

16.5. with regard to the judiciary:

16.5.1. pursue the reforms of the judiciary and the prosecution service so as to ensure full independence of the judiciary, especially from the executive, in order to restore public confidence in the justice system;

16.5.2. take the necessary measures to resolve the problems revealed by the judgments of the European Court of Human Rights as regards the independence, impartiality and fairness of criminal procedures;

16.5.3. refrain from any unjustified application of criminal law to limit freedom of expression;

- 16.5.4. ensure that pretrial detention is only imposed as a measure of last resort and in line with the Council of Europe standards regarding necessity and proportionality, and favour the application of less intrusive measures;
- 16.5.5. ensure also that no pressure is exerted on lawyers defending NGO representatives, political activists, human rights defenders and journalists;
- 16.5.6. set up a juvenile justice system;
- 16.6. with regard to media freedom and freedom of expression:
 - 16.6.1. create conditions enabling journalists to carry out their work freely, ensure that no pressure is exerted on them and, 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;
 - 16.6.2. ensure a genuinely independent and impartial review by the judiciary of cases involving journalists, fight against repression of independent journalists and ensure that there is no more prosecution of independent journalists and bloggers on allegedly trumped-up charges;
 - 16.6.3. continue to step up efforts towards the decriminalisation of defamation, in co-operation with the Venice Commission, and in the meantime remove heavy criminal sanctions, such as custodial sentences for defamation, from the Criminal Code;
- 16.7. with regard to freedom of association and political freedom:
 - 16.7.1. further amend the legal framework on the functioning and financing of civil society organisations in order to bring it into full compliance with Council of Europe standards, including by repealing restrictive laws, unfreezing bank accounts of NGOs and their leaders, and allowing access to independent funding;
 - 16.7.2. ensure that no pressure or repression is exerted on civil society organisations and their members and create an environment conducive to NGO activities, removing travel bans affecting NGO leaders, journalists and political activists, including human rights lawyer Intigam Aliyev and investigative journalist Khadija Ismayilova;
 - 16.7.3. change the domestic legislation and practice on public assemblies to comply with the requirements of Article 11 of the European Convention on Human Rights and investigate the excessive use of force by the police against peaceful protesters;
- 16.8. with regard to conditions of detention and allegations of torture and ill-treatment by law-enforcement officials:
 - 16.8.1. guarantee the publication of all the unpublished CPT reports, and implement the recommendations contained in those reports;
 - 16.8.2. ensure effective investigation into all reported cases of alleged violations with a view to bringing the perpetrators to justice, and take steps to establish an independent, transparent and effective complaints system for allegations of ill-treatment by law-enforcement officials.