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Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of Azerbaijan

Draft Report
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Rapporteur: Mr Mogens JENSEN, Denmark, Socialists, Democrats and Greens Group

Summary

The Monitoring Committee deplores that more than 20 years after joining the Council of Europe, Azerbaijan has not fulfilled major commitments stemming from its membership in the Organisation. Very serious concerns remain as to its ability to conduct free and fair elections, the separation of powers, the weakness of its legislature vis-à-vis the executive, the independence of the judiciary and respect for human rights, as illustrated by numerous judgments of the European Court of Human Rights and opinions of the Venice Commission. It is also concerned about the reported cases of "political prisoners" and the increased number of violations of freedom of expression, illustrated namely by recent arrests of independent journalists from Abzas media outlet.

As regards the situation in Nagorno-Karabakh, the committee recalls Resolution 2508 (2023) condemning the blockade of the Lachin corridor and Resolution 2517 (2023) condemning the Azerbaijani army's military operation of September 2023, which led to the flight of the entire Armenian population of Nagorno-Karabakh to Armenia.

The committee also deplores cases of "lack of co-operation in the Assembly's monitoring procedure" in the meaning of Rule 8.2.b of the Rules of the Assembly, in particular lack of invitation to observe the forthcoming presidential election, and cases of lack of co-operation with Assembly's rapporteurs.

Therefore, the committee proposes not to ratify the credentials of the Azerbaijani delegation.

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A. Draft resolution[2]

1. The Parliamentary Assembly recalls that by acceding to the Council of Europe on 25 January 2001, the Republic of Azerbaijan has agreed to honour several specific commitments listed in Assembly Opinion 222 (2000), as well as the obligations incumbent on all member States under Article 3 of the Statute of the Council of Europe (ETS No. 1): compliance with the principles of pluralist democracy and the rule of law as well as respect for human rights and fundamental freedoms of all persons placed under its jurisdiction.

2. The Assembly deplores that more than 20 years after joining the Council of Europe, Azerbaijan has not fulfilled major commitments stemming therefrom. Very serious concerns remain as to its ability to conduct free and fair elections, the separation of powers, the weakness of its legislature vis-à-vis the executive, the independence of the judiciary and respect for human rights, as illustrated by numerous judgments of the European Court of Human Rights and opinions of the European Commission for Democracy through Law (Venice Commission).

3. In this context, the Assembly recalls its Resolution 2184 (2017) "The functioning of democratic institutions in Azerbaijan", Resolution 2185 (2017) "Azerbaijan's Chairmanship of the Council of Europe: what follow-up on respect for human rights?", Resolution 2279 (2019) "Laundromats: responding to new challenges in the international fight against organised crime, corruption and money laundering", Resolution 2322 (2020) "Reported cases of political prisoners in Azerbaijan", Resolution 2362 (2021) "Restrictions on NGO activities in Council of Europe member States", Resolution 2418 (2022) "Alleged violations of the rights of LGBTI people in the Southern Caucasus", Resolution 2494 (2023) "Implementation of judgments of the European Court of Human Rights, Resolution 2509 (2023) "Transnational repression as a growing threat to the rule of law and human rights" and Resolution 2513 (2023) "Pegasus and similar spyware and secret state surveillance". It also notes with concern that, according to the Council of Europe's Platform to promote the protection of journalism and safety of journalists, at least 18 journalists and media actors are currently in detention.

4. Regarding the situation in Nagorno-Karabakh, the Assembly established the absence of a free and safe access through the Lachin Corridor in its Resolution 2508 (2023) "Ensuring free and safe access through the Lachin corridor" and was struck by the fact that Azerbaijan's leadership did not acknowledge the very serious humanitarian and human rights consequences stemming from that situation, which lasted for nearly ten months. Moreover, in its Resolution 2517 (2023) and Recommendation 2260 (2023) "The humanitarian situation in Nagorno-Karabakh", the Assembly condemned the Azerbaijani army's military operation of September 2023, which led to the flight of the entire Armenian population of Nagorno-Karabakh to Armenia and to allegations of "ethnic cleansing". The Assembly recalls that in Resolution 2517 (2023) it did not exclude challenging the credentials of the Azerbaijani delegation at its first part-session of 2024.

5. The Assembly also notes that on 5 December 2023 the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) adopted a report on the honouring of obligations and commitments by Azerbaijan and that this report will be examined by the Assembly after the snap presidential election in Azerbaijan, which is scheduled for 7 February 2024 and was called on 7 December 2023, shortly after the adoption of the said report.

6. Recalling its Resolution 2322 (2020) "Reported cases of political prisoners in Azerbaijan", the Assembly is also concerned that rapporteurs of the Monitoring Committee were not allowed to meet with persons detained on allegedly politically motivated charges. Moreover, the Assembly strongly regrets that it has not been invited to observe the forthcoming presidential election despite Azerbaijan's obligation to send such an invitation as the country is under monitoring procedure. The Assembly considers these refusals as instances of "lack of co-operation in the Assembly's monitoring procedure" in the meaning of Rule 8.2.b of the Rules of Procedure of the Assembly. Furthermore, it condemns the Azerbaijani delegation's lack of cooperation with the rapporteur of the Committee on Legal Affairs and Human Rights on "Threats to life and safety of journalists and human rights defenders in Azerbaijan", who has been refused to visit the country three times. It also deeply deplores that the rapporteur of the Committee on Migration, Refugees and Displaced Persons on "Ensuring free and safe access through the Lachin corridor" was not invited to Azerbaijan during his fact-finding visit to the region and was thus unable to travel to the Lachin Corridor.

7. Therefore, the Assembly resolves not to ratify the credentials of the Azerbaijani delegation.

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2. Draft resolution adopted by the Committee on 23 January 2024.

B. Explanatory memorandum prepared by Mr Mogens Jensen (Denmark, SOC), rapporteur

1. Introduction

1. On 22 January 2024, with the support of more than 30 members of the Parliamentary Assembly present in the Chamber belonging to at least five national delegations, Mr Frank Schwabe (Germany, SOC) challenged the still unratified credentials of the Azerbaijani delegation on substantive grounds on the basis of Rule 8 of the Rules of Procedure of the Parliamentary Assembly.

2. The substantive grounds on which the credentials were challenged refer to the deteriorating situation with regard to pluralist democracy, respect for the rule of law, human rights and fundamental freedoms as well as to the role of the Azerbaijani authorities in the events of September 2023 which led to the flight of the entire ethnic Armenian population from Nagorno-Karabakh to Armenia. All these issues cast serious doubt as to the compliance of the Republic of Azerbaijan with its commitments and obligations in the Council of Europe.

3. In line with Rule 8.3 of the Rules of Procedure, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) was seized for a report and the Committee on Rules of Procedure, Immunities and Institutional Affairs, for opinion.

4. At its meeting on 22 January 2024, the Monitoring Committee appointed me as rapporteur.

2. Honouring of commitments and obligations stemming from membership in the Council of Europe

5. At its meeting in Rome on 5 December 2023, the Monitoring Committee adopted a report on the honouring of commitments and obligations by Azerbaijan prepared by co-rapporteurs Ms Lise Christoffersen (Norway, SOC) and Mr Ian Liddell-Grainger (United Kingdom, EC/DA). The report has already been tabled and will be published on the Assembly's website after the forthcoming snap presidential election scheduled for 7 February 2024 (announced shortly after the adoption of the Monitoring Committee's report). Therefore, the present report will not replace the report of the Monitoring Committee and will only refer to the major concerns with regard to statutory obligations by Azerbaijan, the most recent developments in the country and cases of lack of co-operation with the Assembly.

6. In acceding to the Council of Europe on 25 January 2001, the Republic of Azerbaijan has agreed to honour several specific commitments which are listed in Assembly Opinion 222 (2000) and has accepted the obligations incumbent on all member States under Article 3 of the Statute of the Council of Europe (ETS No. 1): compliance with the principles of pluralist democracy and the rule of law as well as respect for human rights and fundamental freedoms of all persons placed under its jurisdiction. In its Resolution 2184 (2017) "The functioning of democratic institutions in Azerbaijan" and Resolution 2185 (2017) "Azerbaijan's Chairmanship of the Council of Europe: what follow-up on respect for human rights?", both adopted on 11 October 2017, the Assembly raised a number of serious concerns relating to the separation of powers, the independence of the judiciary and the human rights situation in the country. Most of these concerns have remained unaddressed.

7. As regards pluralist democracy, Azerbaijan has a presidential system of government under which the President, who is appointed for a seven-year term of office, exercises wide constitutional powers vis-à-vis the other branches of power, including the parliament (Milli Majlis), and can even dissolve the latter. Thus, the issue of checks and balances remains highly problematic and the recommendations of the European Commission for Democracy though Law ("Venice Commission"), included in its Opinion CDL-AD(2016)029 of 18 October 2016 on the draft modifications to the Constitution, have not been addressed. The 2018 earlier presidential election and the 2020 earlier parliamentary elections were boycotted by some opposition parties, mainly due to restrictions imposed on political freedoms (see below). Moreover, the Law on political parties of 16 December 2022, criticised by the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODHIR) in their Joint Opinion of 10 March 2023 (CDL-AD(2023)007) might have a chilling effect on pluralism in the country and the exercise of political freedoms. In particular, following its entry into force, some political parties faced difficulties in re-registering. As regards the forthcoming presidential election, candidates were required to present a list of 40,000 eligible citizens' signatures. Seven candidates, including the incumbent President Ilham Aliyev, who has been in office for the last 20 years, have been registered by the Central Election Commission. Some opposition parties (including Popular Front and Musavat) announced that they would boycott the election. On 10 January 2024, President Aliyev explained in public that he had called the snap election because the

"restoration of sovereignty" (referring to the Nagorno-Karabakh takeover) "marked a new era for the country", because it would be the first time when the election would be held in "the entire territories of Azerbaijan" and because of the completion of the 20th year of his presidency.

8. Regarding respect for the rule of law, various credible reports exposed large-scale – including high-level – corruption and the "Azerbaijani Laundromat" (also denounced by the Assembly in its Resolution 2279 (2019) "Laundromats: responding to new challenges in the international fight against organised crime, corruption and money laundering"). Although Azerbaijan has made some progress in implementing the recommendations of the Group of States against Corruption (GRECO), in particular by reforming in June 2023 the composition of the Judicial Legal Council, independence of the judiciary is still an issue of serious concern, as illustrated by numerous allegations concerning the existence of "political prisoners". Since Assembly's Resolution 2322 (2020) "Reported Cases of political prisoners in Azerbaijan" of January 2021 and despite judgments of the European Court of Human Rights finding a pattern of arbitrary arrest and detention of government critics, no tangible progress has been achieved on this issue.[3] According to the most recent list prepared by the "Union for the Freedom of Political Prisoners in Azerbaijan" (a group of activists and former "prisoners of conscience"), as of 1 December 2023 there were 254 "political prisoners" in Azerbaijan.[4]

9. In general, the human rights situation has regrettably not improved since the adoption of Assembly's Resolution 2184 (2017) and Resolution 2185 (2017). Very serious concerns remain about restrictions on the rights to freedom of expression, media freedom and freedom of association and assembly which have a negative impact on the overall situation of civil society, including human rights defenders, civil and political activists as well as journalists and bloggers.

10. The right to freedom of expression and media freedom is constantly violated through the harassment and intimidation of journalists[5] and other people publicly criticising the government, surveillance through the Pegasus spyware (see Assembly's Resolution 2513 (2023)[6]), the restrictive legal framework in which journalists operate, including criminal sanctions for defamation and the entry into force of the Law on Media of 30 December 2021, which imposed on journalists and media outlets an obligation to register at the Media Development Agency and which was criticised by the Venice Commission in its opinion of 20 June 2022 (CDL-AD(2022)009).

11. As regards recent developments, on 20 and 21 November 2023 a few journalists and other persons related to the Abzas media outlet (one of the few independent media outlet in the country, known for exposing cases of corruption) – its director Ulvi Hasanli, and his two collaborators Sevinc Vaqifqizi and Mahammad Kekalov – were arrested and are now detained on charges of unlawfully bringing money to the country. They face a sentence of up to 8 years of prison. MM. Hasanli and Kekalov also allege that they were ill-treated by police during their apprehension on 20 November. In April 2023, Mr Hasanli took part as an expert in the joint hearing organised by the Monitoring Committee, the Committee on Legal Affairs and Human Rights and the Committee on Culture, Science, Education and Media, and testified about cases of harassment of journalists in his country. In December 2023 and in January 2024, two other Abzas journalists – Nargiz Absalamova and Elnara Gasimova – as well as Hafiz Babali, financial editor at the news agency Turan, were arrested and placed in detention in connection with the Abzas case. Moreover, on 11 December 2023, Ibrahim Humbatov (also known as Gubadoglu), the editor-in-chief of the news website Azerinfo.az, was placed in detention on remand for four months.[7]

12. Ongoing restrictions on the right to freedom of association and assembly and the overall situation of NGOs are another issue of concern. NGOs continue to operate in a very repressive environment under the restrictive legislative framework introduced in 2014 (an issue which was already condemned by the Assembly in Resolution 2362 (2021) "Restrictions on NGO activities in Council of Europe member States" and Resolution 2226 (2018) "New restrictions on NGO activities in Council of Europe member States") and, as

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3. AS/Jur (2021) 12, "Reported cases of political prisoners in Azerbaijan: follow-up to Resolution 2322 (2020)", 17 June 2021, paragraph 12.
4. Political prisoners for 1 december 2023 – Institute for peace and democracy (ipd-az.org)
5. There are currently 18 journalists in detention (as of 22 January 2024), according to the Council of Europe Platform for the Safety of Journalists. See also the report by the Committee on Culture, Science, Education and Media on "Guaranteeing media freedom and the safety of journalists: an obligation of member States", rapporteur Mr Mogens Jensen (Denmark, SOC), Doc. 15891 of 5 January 2024.
6. On "Pegasus and similar spyware and secret state surveillance", adopted on 11 October 2023, see Doc. 15825, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pieter Omtzigt (Netherlands, EPP/DC). The Assembly stressed that there was a "strong evidence" that Azerbaijan used the Pegasus spyware against journalists and civil society activists, including in connection with the conflict with Armenia.
7. Council of Europe Plaform for the Safety of Journalism.

mentioned above, civil society activists are subject to various forms of intimidation and attacks. On 14 December 2023, after the announcement of the snap presidential election, prominent opposition activist Tofig Yagublu was arrested and placed in pre-trial detention for four months. Courts also decided to extend the pre-trial detention of distinguished scholar and activist Gubad Ibadoghlu and of civil society activist Bakhtiyar Hajiyev.[8]

13. Moreover, allegations of torture and ill-treatment by the police and other law enforcement agencies remain of major concern and should be effectively investigated by the authorities, as pointed out by a recent report by the Committee on Legal Affairs and Human Rights, to be debated by the Assembly this week. The rapporteur Mr Constantinos Efstathiou (Cyprus, SOC), was particularly dismayed about the "Terter cases" where detainees were subjected to "horrendous methods of torture" with the purpose of extracting confessions, with 11 confirmed deaths as a result of that torture.[9]

14. Other issues of concern refer to cases of cross-border abductions (see Resolution 2509 (2023)[10]) and reprisals against LGBTI people (see Resolution 2418 (2022)[11]). Moreover, on 4 January 2024, the authorities of the United States of America put Azerbaijan on the Religious Freedom Watchlist as country "engaging in or tolerating severe violations of religious freedom."[12]

15. Azerbaijan is one of the countries having the highest number of non-implemented Court judgments and is still facing serious structural or complex problems, some of which had not been resolved for over ten years (see Assembly's Resolution 2494 (2023) "Implementation of judgments of the European Court of Human Rights"[13]). More than 320 Court judgments against Azerbaijan have not yet been executed or have been only partially implemented.

16. Moreover, issues related to Nagorno-Karabakh put into question the country's commitment to a peaceful settlement of the conflict, which it had accepted while joining the Council of Europe (see Assembly Opinion 222 (2000)). On numerous occasions, the Assembly examined the humanitarian and human rights situation in the Lachin corridor, whose access had been blocked for months despite calls from various international courts and institutions to allow free passage (see Resolution 2508 (2023)[14] and Resolution 2517 (2023)[15]). Finally, the blockade ended following the military operation launched by the Azerbaijani army on 19 September 2023, after which the entire Armenian population of Nagorno-Karabakh (more than 100 600 persons) had fled to Armenia, which led to allegations of "ethnic cleansing".[16] Following her visit to the area in October 2023, the Council of Europe Commissioner for Human Rights Dunja Mijatović, who witnessed hardly no sign of presence of civilians in the capital of the region Khankendi (Stepanakert in Armenian), concluded that the Armenians who fled Nagorno-Karabakh "found themselves abandoned without any reliable security or protection guarantees by any party" and that leaving was "the only reasonable option available".[17] Due to all these events, the Assembly did not exclude the possibility of initiating a complementary joint procedure and of challenging the credentials of the Azerbaijani delegation at its first part of the 2024 session.[18]

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8. European Union External Action (21 December 2023).
9. Report on "Allegations of systemic torture and inhuman or degrading treatment or punishment in places of detention in Europe", Doc. 15880 of 11 December 2023.
10. On "Transnational repression as a growing threat to the rule of law and human rights" adopted on 23 June 2023, see also Doc. 15787, report of the Committee on Legal Affairs and Human Rights, rapporteur: Sir Christopher Chope (United Kingdom, EC/DA). The Assembly condemned the use by Azerbaijani authorities of certain transnational repression techniques such as renditions and cross-border abductions, mainly against journalists.
11. Adopted on 25 January 2022, see Doc. 15429, report of the Committee on Equality and Non-Discrimination, rapporteur: Mr Christophe Lacroix (Belgium, SOC).
12. US Department of State (4 January 2024). It should be noted in this context that the country has still not implemented the judgment of European Court of Human Rights, *Mushtig Mammadov and Others v. Azerbaijan,* (Application No. 14604/08, judgment of 17 October 2019), criticising the absence of civilian alternative to military service for conscientious objectors (mainly Jehovah's witnesses).
13. Adopted on 26 April 2023, see also Doc. 15742, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Constantinos Efstathiou (Cyprus, SOC).
14. On "Ensuring free and safe access through the Lachin Corridor" of 22 June 2023. See also report by the Committee on Migration, Refugees and Displaced Persons (Doc. 15796), rapporteur: Mr Paul Gavan (Ireland, UEL).
15. On "Humanitarian situation in Nagorno-Karabakh" of 12 October 2023. See also report by the Committee on Migration, Refugees and Displaced Persons (Doc. 15840), rapporteur: Mr Domagoj Hajduković (Croatia, SOC).
16. See paragraph 13 of Resolution 2517 (2023).
17. Statement by the Commissioner for Human Rights (12 January 2024).
18. See paragraph 23 of Resolution 2517 (2023).

3. Lack of co-operation

17. The Monitoring Committee rapporteurs visited Azerbaijan on 3-7 June 2023. Although during this visit the rapporteurs met a number of representatives of the authorities at the highest level, they were not authorised to visit in prison any of the persons detained allegedly on politically motivated charges. The Minister of Justice promised them to organise such visits on the occasion of their next mission to Baku. That is why another fact-finding visit was organised on 20 and 21 November 2023 (this time in the absence of the co-rapporteur Mr Liddell-Grainger). During this second visit, despite prior arrangements between the co-rapporteur Ms Christoffersen, the Assembly Secretariat and the Azerbaijani delegation to the Assembly, only three meetings were organised by the Azerbaijani hosts: with officials in the Ministry of Justice, with officials and prosecutors in the Prosecutor General's Office and with the Azerbaijani delegation to the Assembly. Unfortunately, the foreseen meetings with some persons detained allegedly on politically motivated charges did not take place apparently because of lack of approval from the executive authorities. It is also deplorable that the arrest of journalists Ulvi Hasanli, Sevinc Vaqifqizi and Mahammad Kekalov took place during Ms Christoffersen's visit to Baku.

18. What is more, in June 2023, Paul Gavan (Ireland, UEL), rapporteur for "Ensuring a free and safe access through the Lachin corridor" of the Committee on Migration, Refugees and Displaced Persons was not invited to Azerbaijan to carry out a fact-finding visit for the preparation of his report. So far the Azerbaijani delegation has not agreed to invite the rapporteur of the Committee on Legal Affairs and Human Rights, Ms Hannah Bardell (United Kingdom, NR), who is currently preparing a report on "Threats to life and safety of journalists and human rights defenders in Azerbaijan" and was authorised in March 2023 by that committee to carry out a fact-finding visit to the country. So far, three dates proposed by the rapporteur (in July and December 2023 and February 2024) have not been accepted by the delegation for various organisational and substantive reasons, although the reference for the preparation of this report expires on 24 June 2024. Moreover, the Assembly has not received an invitation to observe the presidential election scheduled for 7 February 2024.

4. Conclusion

19. From the above, it is clear that a number of outstanding serious concerns with regard to the rule of law, pluralist democracy and human rights remain unaddressed in Azerbaijan, as illustrated by numerous judgments of the European Court of Human Rights, opinions of the Venice Commission, Assembly's resolutions and various credible reports. All this puts into question the country's will to respect the basic principles enshrined in Article 3 of, and the Preamble to, the Statute of the Council of Europe as well as to honour obligations and commitments related to its membership in the Organisation. In particular, serious violations of political freedoms, often coupled with violations of non-derogable rights, such as the prohibition of torture and ill-treatment, and/or allegations of lack of independence of the judiciary cast doubts as to the existence of a 'genuine democracy' and respect for the rule of law in Azerbaijan. Also the long-standing blockade of the Lachin corridor, the military operation of 19-20 September 2023 in Nagorno-Karabakh and other events which led to the massive exodus of the ethnic Armenian population to Armenia and allegations of "ethnic cleansing" cannot be unaddressed by the Assembly.

20. Moreover, the fact that the rapporteurs of the Monitoring Committee were denied access to persons detained allegedly on politically motivated charges, while this issue has been raised by the Assembly on numerous occasions, is a clear example of lack of co-operation in the Assembly's monitoring procedure, as stipulated in Rule 8.2.b of the Rules of Procedure of the Assembly.

21. For these reasons, the Assembly should not ratify the credentials of the Azerbaijani delegation.

Appendix – Dissenting opinion by Mr Samad Seyidov (Azerbaijan, EC/DA), member of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe pursuant to Rule 50.4 of the Assembly Rules of Procedure

The delegation of Azerbaijan strongly rejects the initiation of the challenge, on the substantial grounds, of its still unratified credentials. We are of the view this initiative is a clear manifestation of deep-rooted bias and prejudice against Azerbaijan as an independent and sovereign nation.

The reasons listed in this report for challenging our credentials are unsubstantiated and unfounded. To our knowledge, never before in the history of the PACE, the ratification of the credential of a national delegation was refused based on such groundless pretexts.

The Republic of Azerbaijan has acceded to the Council of Europe in 2001 with the strong hope that its violated rights as a result of the aggression and occupation of the Azerbaijani territories by Armenia would be restored, and the justice will be served. During 19 years, the aggressor State Armenia was never condemned and held accountable for its aggressive actions. Now, after Azerbaijan has restored its territorial integrity and sovereignty, we face a co-ordinated and orchestrated campaign to denigrate Azerbaijan. The initiative on challenging the credentials of our delegation is simply a part of that vicious campaign, and we firmly denounce it.

The refusal to ratify the credentials of our delegation will be a serious blow to the authority of the PACE and the Council of Europe in general, and the responsibility for its serious consequences lies with the initiators of this short-sighted move.