Resolution 1358 (2004)[1]

Functioning of democratic institutions in Azerbaijan

Parliamentary Assembly

1. Ten years after its independence Azerbaijan is, for the first time, undergoing political transition, with Ilham Aliyev elected as President in October 2003. The new government has serious work to do in pursuing the reforms that are necessary to fulfil Azerbaijan's obligations and commitments as a member state of the Council of Europe.

2. The Parliamentary Assembly believes that the newly-elected President must be given an opportunity to demonstrate his commitment to European democratic values and principles. As the former president of the Azerbaijani delegation to the Assembly, Mr Ilham Aliyev is familiar with the obligations resulting from his country's membership of the Council of Europe. The Assembly therefore hopes that he will speedily initiate the necessary reforms in the field of pluralistic democracy, rule of law and respect for human rights.

3. Moreover, the Assembly regrets that no progress has been made towards peacefully resolving the situation concerning the Armenian-Azerbaijani conflict over Nagorno-Karabakh, which was the principal justification for inviting Azerbaijan and Armenia to join the Council of Europe at the same time.

4. The Assembly notes with satisfaction the fact that Azerbaijan has ratified the European Social Charter, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption, the European Convention on Mutual Assistance in Criminal Matters and its additional protocols, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, but the Assembly insists that the Conventions must be fully implemented in order for Azerbaijan to comply with its commitments.

5. The Assembly recognises that Azerbaijan has made some progress towards honouring its obligations and commitments since the last monitoring report in September 2002. However, it considers that this progress is far from satisfactory, particularly with regard to the implementation of new laws. It therefore expects the new government to take into account the following findings and to act on the Assembly's recommendations.

6. With regard to the presidential election of 15 October 2003, the Assembly is particularly concerned:

6.1. that Azerbaijan's first election since its accession to the Council of Europe again failed to meet generally accepted international standards in several areas. The lack of transparency of the overall process and the poor performance of the election administration allowed for falsification of election results and cast doubt on the credibility of the scale of Ilham Aliyev's victory; ii. that

6.2. at the post-election violence that erupted on the day after the election, and particularly at the excessive use of force by the Azerbaijani security forces, which resulted in the death of at least one protester and the injuring of hundreds of others. The Assembly is not aware of any steps taken by the authorities to investigate and prosecute the excessive use of force by the security forces;

6.3. that the wave of arbitrary arrests of opposition supporters and election officials and observers, as well as politically motivated dismissals that were reported in the post-election period, seem to continue. Conditions of detention are inhuman and unacceptable;

1. Assembly debate on 27 January 2004 (2nd Sitting) (see Doc.10030, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Gross and Mr Martínez Casañ). Text adopted by the Assembly on 27 January 2004 (2nd Sitting)

6.4. at widespread and credible reports of torture, severe beatings, and unacceptable threats that were made to intimidate opposition leaders and their supporters, as well as human rights activists. In particular, the Assembly expresses concern at reports that numerous opposition leaders were tortured and abused at the Ministry of the Interior's Organized Crime Unit;

6.5. that more than 100 people associated with the opposition, including a former prime minister of Azerbaijan, a member of the Azerbaijani Parliament, the leaders of several opposition parties, the editor of Azerbaijan's main opposition newspaper, and a number of civil society leaders, remain in detention since the October 2003 elections and may face long sentences of imprisonment if convicted;

6.6. by the fact that the Azerbaijani authorities should continue to release people who have been detained since 15 October 2003 and should refrain from any new arrests and detentions of people for their political opinions and activities, personal opinions or beliefs

7. With regard to the separation of powers, the Assembly notes that the constitutional provisions regarding the separation of powers seem to be inadequate and that this fundamental principle appears not to be applied in practice. The parliament must reinforce its independence vis-à-vis the executive in order to exercise control over the government's activities, especially in the field of respect for human rights. In a democratic system, the parliament must, in particular, be able to exercise its right to question members of the government and to receive precise answers as regards implementation of the laws and the use of government executive powers.

8. With regard to media, the Assembly deplores the fact that:

8.1. the numerous problems concerning the media reported in the year leading up to the election were not appropriately dealt with. The activities of independent media in Azerbaijan were extremely weakened. During the election campaign the state-controlled media failed to offer equal opportunities to all candidates and showed an undeniable bias in favour of the candidacy of the current President;

8.2. the commitment undertaken by Azerbaijan to transform the two existing state channels into truly independent public service broadcasting organisations was not fulfilled. The Assembly regrets that the draft law on public television currently being examined by the parliament was not submitted to the Council of Europe for a final appraisal. Furthermore, the Assembly stresses that the National Council of Radio-Television responsible for regulating the private electronic media should operate on a pluralistic and democratic basis and act in an independent, impartial and transparent manner.

9. With regard to fundamental freedoms, the Assembly can only conclude that efforts made are far from satisfactory:

9.1. freedom of expression has been further curtailed since the adoption of Resolution 1305 (2002), and none of the recommendations contained therein were taken into consideration. The voters' basic right to freely express their choice was systematically undermined by insidious pressure and lack of secrecy in voting procedures. Journalists were reported to exercise self-censorship due to intimidation by the executive bodies and non-state media were administratively harassed;

9.2. freedom of association still causes serious concern. The numerous restrictions on freedom of association and obstacles to the implementation of citizens' rights to associate are unacceptable. A proper system of registration of associations and other bodies should be put into place, and specific means provided for exercising the right of association;

9.3. freedom of peaceful assembly still suffers repeated and unacceptable restrictions, and impediments to the right to campaign were again observed during the presidential election. Despite strong recommendations by the Assembly on this matter, numerous incidents of undue and disproportionate use of force against demonstrators were reported. The Assembly considers that the situation concerning this basic freedom has not improved as one would have expected from a country which has been a member of the Council of Europe for more than two years;

9.4. violations of basic human rights by law enforcement bodies are still reported and the police forces still react in an unsuitable and disproportionate manner. The Assembly can only deplore once again the use of force which resulted in the death of at least one person. The Assembly considers that the scale of the post-election protest movement shows an obvious lack of democratic opportunities for the population to express its concerns;

9.5. the torture and ill-treatment of detainees continue. The Assembly cannot accept detention conditions where detainees are deprived of food and water, denied access to their lawyers and subjected to physical and psychological pressure and ill-treatment in order to extract confessions.

10. In the light of the above, the Assembly urges the Azerbaijani authorities:

10.1. to set up, with the assistance and participation of Council of Europe experts and parliamentarians, a national parliamentary enquiry commission to investigate the shortcomings of the electoral system and the human rights violations that took place during and after the elections;

10.2. to release or speedily bring to trial supporters and leaders of opposition political parties detained in the post-election period. All detainees must be granted access to their lawyers and be afforded the right to a fair trial. The presumption of innocence must be respected and the sentences imposed should be proportionate. The authorities must take all necessary measures to make sure that none of the cases under investigation result in new cases of political prisoners;

10.3. to take the appropriate measures to investigate, and if necessary prosecute the perpetrators of, all cases of ill-treatment and torture. There should be no impunity for state officials involved in such practices;

10.4. to take measures and, if necessary, legislate in order to protect the media, NGOs, political activists or their relatives from intimidation and harassment by the authorities;

10.5. to take measures enabling the written press to function freely and properly, especially with regard to access to paper, printing and distribution facilities;

10.6. to continue to ensure that election officials responsible for election frauds and other violations of the Electoral Code are brought to justice;

10.7. to publish the election results in their entirety, for each polling station, and to officially acknowledge the serious irregularities that occurred during the 2003 election process;

10.8. to immediately start preparing a new civil register in order to improve the currently deficient electoral lists. This process should be transparent and should guarantee proper registration of voters for the future municipal elections scheduled for 2004;

10.9. to adopt the Law on the Statute of the Constitutional Court and to further amend accordingly the relevant procedural codes essential to the proper functioning of this newly-created institution;

10.10. to effectively continue and implement without delay the reform of the judicial system, in order to guarantee the full independence and credibility of this institution, taking into account the recommendations made by the experts of the Council of Europe in December 2002;

10.11. to speedily forward to the Council of Europe for appraisal, according to the initial commitments and obligations entered into by Azerbaijan upon accession, the texts of the following laws before they are signed by the President:

the Law on Corruption;

the Law on Registration of Legal Entities;

the Law on Advocacy and Defence;

the Law on Public Service Broadcasting;

the Law on Access to Information, in order to ensure that these are fully in line with Council of Europe standards before they enter into force;

to take the appropriate measures in order to fulfil the remaining obligations and commitments specified in Resolution 1305 (2002).

11. The Assembly cannot envisage closing the current monitoring procedure until Azerbaijan has made substantial progress on the outstanding issues and, notably, before it has proved to be capable of running free and fair elections in line with internationally accepted standards.

12. It recalls that closing the monitoring procedure can only be envisaged upon fulfilment of all major commitments, which includes, in the case of Azerbaijan and Armenia, an agreement on the peaceful settlement of the conflict over Nagorno Karabakh and the other occupied territories of Azerbaijan, which has been pending for more than eight years now.

13. Recalling that in Opinion No. 222 (2000) the Assembly considered that the simultaneous accession of Azerbaijan and Armenia to the Council of Europe could help to establish the climate of trust and détente needed for a peaceful solution to the Nagorno-Karabakh conflict, and noting its call on the Azerbaijani and Armenian authorities to continue their dialogue to give new impetus to regional co-operation which could

contribute to this climate, the Assembly calls on the Bureau of the Assembly to consider how the regional parliamentary dialogue and co-operation involving the speakers of parliaments, that had been established, could be restored and progress as soon as possible.

14. Meanwhile, the Parliamentary Assembly expects the Azerbaijani authorities to demonstrate clearly their commitment to the principles on which the Council of Europe was founded and the values of a democratic, humanist and tolerant Europe. In this context, the Assembly firmly urges the Azerbaijani authorities to address in particular, without delay, the issues mentioned in paragraph 10 of the present resolution.

15. The Assembly also urges the Azerbaijani parliamentary delegation and the entire parliament to fully support the measures that must be taken by the authorities in order to comply with the Assembly's recommendations.

16. If no progress is recorded by June 2004, the Assembly may be requested to reconsider the ratification of the credentials of the Azerbaijani parliamentary delegation to the Council of Europe, in conformity with Article 12 of Resolution 1115 (1997) and Rule 9 of its Rules of Procedure.