



Resolution 1398 (2004)¹

Implementation of Resolution 1358 (2004) on the functioning of democratic institutions in Azerbaijan

Parliamentary Assembly

1. Since Mr Ilham Aliyev was elected President of the Republic of Azerbaijan in October 2003, the new government has embarked on a series of domestic reforms that are essential if Azerbaijan is fully to honour its obligations and commitments as a Council of Europe member state. With regard to foreign affairs, it has adopted a resolutely pro-European national independence policy. However, tensions within the government can be observed and consequently current reforms are not progressing as quickly as the President might have wished.
2. It will be remembered that the Parliamentary Assembly gave the newly elected President an opportunity to demonstrate his commitment to the Council of Europe's democratic principles and values. It considers that, nearly a year after this election, there are a number of positive signs, for example in the form of four presidential pardon decrees, and notes that a number of reforms concerning pluralist democracy, the rule of law and respect for human rights are under way. It particularly welcomes the good climate of co-operation and trust that prevails between the Assembly and the Azerbaijani authorities.
3. Despite the fact that Azerbaijan has declared that it favours a peaceful settlement of the conflict over Nagorno-Karabakh and the occupied territories of Azerbaijan, which is one of the obligations of Azerbaijan and Armenia before the Council of Europe, the Assembly cannot but observe that no tangible progress has been made over the past year either in the direct negotiations between the presidents of the two countries, which are still taking place, or within the Minsk Group. The Assembly strongly urges Azerbaijan and Armenia to continue to seek the earliest solution to the conflict in conformity with the norms and principles of international law.
4. The Assembly acknowledges that Azerbaijan has made some progress in honouring its obligations and commitments since [Resolution 1358 \(2004\)](#) on the functioning of democratic institutions in Azerbaijan. It considers, however, that this progress is inadequate. It therefore encourages the government and parliament to aim at settling the outstanding issues mentioned below and follow up the recommendations below.
5. In particular, the Assembly notes with concern that, despite the requests made in [Resolution 1358 \(2004\)](#):
 - 5.1. transparency of the entire electoral process has still not been satisfactorily ensured by means of improvements in the performance of the election administration, and there has still been no official recognition of the serious fraud that marred the presidential election in October 2003;
 - 5.2. those guilty of fraud during the October 2003 presidential election have not been prosecuted or convicted; the same goes for most of the law-enforcement officers who were responsible for instances of torture, inhuman treatment, threats and intimidation in respect of members of the opposition, members of their families, supporters, journalists and human rights activists;
 - 5.3. some political prisoners and alleged political prisoners are still in jail and people still run the risk of being arrested and imprisoned for political reasons

1. Assembly debate on 5 October 2004 (27th Sitting) (see [Doc.10285](#), 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 Herkel). Text adopted by the Assembly on 26 January 2004 (1st Sitting).



6. With regard to the separation of powers, the Assembly is still waiting for the parliament to be genuinely able to play its role in legislating and in overseeing the executive and for the judiciary to be completely independent of the executive.
7. The Assembly is pleased to note that the parliamentary delegation of Azerbaijan has taken initiatives with a view to making improvements, such as being in favour of abolishing the electoral code rule which does not allow NGOs receiving 30% of their funds from foreign sources to send observers to elections, or concerning the right to education for Chechen children born in Azerbaijan. The Assembly hopes that the list of the delegation's initiatives will be extended.
8. With regard to fundamental freedoms, the Assembly observes that:
 - 8.1. freedom of expression is not guaranteed in practice and journalists are increasingly engaging in self-censorship;
 - 8.2. freedom of association is still not unhindered, even now that the Legal Entities Act has been passed;
 - 8.3. permission to hold peaceful meetings is refused in too many cases, often on the basis of a pretext;
 - 8.4. law-enforcement bodies continue, according to numerous credible and consistent accounts, to use psychological pressure and violence against people who have difficulties with authority at any level;
 - 8.5. prisoners continue to be ill-treated, not least in order to make them confess.
9. With regard to the media, the Assembly:
 - 9.1. expects the independent media in Azerbaijan to be able to resume their activities without being constantly threatened with being gagged or harassed;
 - 9.2. welcomes the recent adoption by the Parliament of Azerbaijan of the Law on Public Broadcasting Service and calls on the Azerbaijani authorities to fully implement the provisions of that law in practice. Establishing a public television service is indispensable for all democracies, especially if the aim is to ensure real pluralism. The propagation of biased news programmes should be avoided
10. In the light of the foregoing, the Assembly requests the Azerbaijani authorities to:
 - 10.1. remedy the violations of the electoral system and shed full light on the human rights violations that took place during and after the October 2003 presidential election;
 - 10.2. rapidly release or pardon the seven people imprisoned following the events which took place after the elections, and whom the co-rapporteurs met, and the thirty-three other people sentenced on that occasion;
 - 10.3. take steps to investigate all cases of ill-treatment and torture and, where necessary, prosecute the perpetrators; government officials engaging in such practices should not be left unpunished;
 - 10.4. legislate to protect political activists, their supporters and their families from all forms of harassment and intimidation from any source;
 - 10.5. take all steps to allow the press to operate independently;
 - 10.6. ensure that election officers who are responsible for fraud are taken to court;
 - 10.7. publish full election results for each polling station and officially acknowledge the serious irregularities that marred the 2003 elections;
 - 10.8. draw up a new civil register so that voters can be properly registered, if possible in time for the forthcoming municipal elections scheduled for the end of 2004, and at the latest in time for the parliamentary elections in 2005;
 - 10.9. continue to reform the judicial system and co-operate with the Council of Europe in order to revise the Criminal and Civil Codes, draw up an administrative code and introduce an alternative to military service;
 - 10.10. increase aid to displaced persons, refugees and asylum seekers, including those from Chechnya, and provide education for their children;
 - 10.11. continue to take appropriate steps to honour their outstanding obligations and commitments, as set out in Resolutions 1305 (2002) and 1358 (2004).

11. The Assembly cannot consider closing the current monitoring procedure until such time as Azerbaijan has proven that its commitments have been irreversibly implemented; its capacity to organise free and fair elections, in accordance with internationally recognised standards, will have to be tested again.

12. The Assembly takes note of the Azerbaijani authorities' willingness to adhere to the principles underpinning the Council of Europe and the values of a democratic, humanist and tolerant Europe. The Assembly notes, however, that fourteen political prisoners are still in prison, as well as 174 other alleged political prisoners; it therefore considers that the question of political prisoners has still not been satisfactorily and definitively resolved, in spite of the ongoing constructive dialogue between the Assembly and the President of Azerbaijan and the parliamentary delegation of Azerbaijan. The Assembly once again asks the Azerbaijani authorities, as a token of their good faith, to take steps to finally settle the problem of political prisoners and alleged political prisoners who are still in jail, to refrain from reproducing the familiar cycle whereby they "manufacture" such prisoners, and in particular to immediately release the fourteen political prisoners still in prison, given that the retrials received by most of them were not carried out entirely according to the norms and principles of the Council of Europe.

13. The Assembly renews its invitation to the Azerbaijani parliamentary delegation and to the Azerbaijani Parliament to spare no effort in supporting the measures the authorities need to take to comply with the Assembly's past and current recommendations.

14. The Assembly decides that it will monitor the organisation of the forthcoming municipal elections with special care as a new test of democracy in Azerbaijan