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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of obligations and commitments by Azerbaijan

Information note on a fact-finding visit to Baku (15 – 17 June 2016)

Co-rapporteurs: Mr Stefan Schennach, Austria, SOC, and Mr Cezar Florin Preda, Romania, EPP/CD

I. Introduction

1. Our fact-finding visit to Baku took place from 15 to 17 June 2016, following Mr Preda's appointment as co-rapporteur for Azerbaijan on 19 April 2016, which came shortly after Mr Schennach's fact-finding visit to Azerbaijan at the beginning of April. The present note constitutes a short update of the previous co-rapporteur's note of May 2016 and should be seen in conjunction with it.²

2. We had meetings with the President of the Republic, Speaker of Parliament, Prosecutor General, Justice Minister and Central Election Commission head, representatives of religious institutions as well as the members of Azerbaijan's delegation to PACE. We also met with representatives of civil society, representatives of the media and extra-parliamentary opposition parties, as well as members of the international community. We visited Ilgar Mammadov in detention and had meetings with persons who were recently released, including Khadija Ismayilova, Mr Siraj Karimov, Mr Hilal Mammadov, Mr Yadigar Sadigov, Mr Rashad Hasanov, and Mr Intigam Aliyev.

3. After the fact-finding visit, Mr Alain Destexhe (Belgium, ALDE), Mr Schennach and Mr Preda ensured the Assembly's presence during the repeat of parliamentary elections in Azerbaijan's Constituency No. 90 in Agdash and issued a memorandum to the Bureau on their findings after the elections.

4. We would like to thank the Parliament of Azerbaijan and notably the Head of the Azerbaijan Delegation to the Assembly, as well as the Head of the Council of Europe Office in Baku and her staff for the programme and kind assistance given to our delegation.

II. Human rights situation

5. We looked into the respect for human rights in Azerbaijan, especially the situation of human rights defenders, political activists, journalists and bloggers as well as religious activists in detention. In this context, we took into consideration:

- Amnesty International's list of prisoners of conscience, which included eight names at the time of the visit,
- the list of so-called "political prisoners" in Azerbaijan prepared by the Monitoring Group of Human Rights organisations in Azerbaijan, which includes 23 names;
- the list of so-called "political prisoners" prepared by other Azerbaijani NGOs including a total of 76 names, mostly religious activists.

¹ Document declassified by the Monitoring Committee at its meeting on 22 September 2016.

² <http://website-pace.net/documents/19887/2221584/20160513-emondoc08-Azerba%C3%AFdjan-EN.pdf/7cce9c09-4929-4d51-90a7-80a9c3546993>.

6. During our meetings with civil society activists, discussions not only focused on the lists of prisoners but also on the overall situation of human rights and the judiciary (see also section III below).

7. During our visit we welcomed the recent release of some human rights defenders, political activists and journalists which we consider a positive first step. We met with Ms Khadija Ismayilova who had been released since the last rapporteur visit. We expressed the hope that other human rights defenders, journalists and activists would also be released soon, including Ilgar Mammadov.

8. Ilgar Mammadov's case was raised in discussions with the President of the Republic, the General Prosecutor and the Minister of Justice. We met with Ilgar Mammadov in Penitentiary Establishment 2 in Baku where he expressed frustration over the fact that he was still imprisoned.

9. We also looked into the situation of the religious activists and notably the group of people arrested in 2007 (the so-called Said Dadashbayli's case). We gathered information through our meetings with representatives of religious institutions and with civil society. Civil society representatives claimed that a substantial number of persons are detained because of their religious affiliations as illustrated in their list of so-called "political prisoners". According to the authorities, these people are not detained because of their religious activities but because of criminal offences. We will continue looking into this issue during our next visits.

10. In our meetings with civil society representatives, the issue was raised of the arrest of two youth activists, Bayram Mammadov and Giyas Ibrahimov, on 10 May after they painted political graffiti on the statue of former President Heydar Aliyev, and who are considered by Amnesty International to be prisoners of conscience. They alleged that they were mistreated and tortured by the police. We raised this issue with the authorities including with the President of the Republic himself and we were told that they had been arrested and put in pre-trial detention due to their criminal activities and that they had been charged with the offence of drug possession. According to the authorities, their pre-trial detention and the charges were compliant with the law. They mentioned that a representative of the Office of the Ombudsman had visited to the two young men in detention and that the report issued did not mention any ill-treatment. We insisted on the need to fight against impunity and that all allegations of abuse must be properly investigated and those responsible must be sent to trial.

11. We would like to welcome once more the fact that a solution could be found for Mr and Ms Yunus and that after the previous co-rapporteur's visit to Baku they were allowed to leave Azerbaijan on humanitarian grounds for health reasons to go for medical treatment abroad, and join their daughter in the Netherlands.

12. A number of issues were raised by the civil society representatives and persons recently released about living conditions after prison. We were told that despite the presidential pardon and their release, some bank accounts were still blocked. We raised this issue with the General Prosecutor and the Minister of Justice. The General Prosecutor explained that according to the law, bank accounts can be blocked as an administrative measure by the Minister of Finance while the General Prosecutor is competent in case of criminal matters. The Minister of Justice informed us that the restrictions to the bank accounts are linked to the criminal offence previously committed, and that the persons concerned can go to court to ask for the lifting of the restrictions. We were also told by civil society representatives that persons that had been pardoned have been subject to systematic searches while exiting and entering the country. Others had been prevented from leaving the country. We raised all these issues with the authorities and were told that all these actions had been compliant with the law.

13. Civil society representatives claimed that in some cases the money allocated by the ECtHR to lawyers with regard to legal aid had been considered criminal proceeds by domestic courts. We did not receive any evidence of these allegations.

14. During the visit, we stressed the great importance attached by the Council of Europe to the respect for human rights and fundamental freedoms, including freedom of expression and media freedom (including online media), as well as freedom of association. We discussed in particular the issue of the NGO legislation and its implementation and we insisted that it needs to be reformed without delay. The authorities should make full use of Council of Europe expertise to reform the NGO legislation and practice in order to ensure its compliance with European standards.

III. Justice system

15. One of the focuses of the visit was the justice reform. As mentioned previously, while during our visit we considered specific ongoing cases of persons in detention, our discussions mainly focused on reforms of the justice system as a whole.

16. During our meetings with the civil society, we were told that many human rights violations were due to shortcomings in criminal procedure and that this issue therefore should be addressed globally. The issues of the functioning of the courts, capacities of judges and prosecutors, the non-functioning of the bar association and the need to reform the police were raised during the meetings.

17. We were informed by the Azerbaijani authorities that their actions in the field of human rights were compliant with the existing legislation. We insisted that the Azerbaijani delegation to PACE should make every effort to push forward amendments to the legislation in the area of human rights.

18. In discussions with the Minister of Justice, we were informed about the recent reforms carried out in the field of justice. He mentioned in particular the reforms regarding the selection procedure of judges and prosecutors, the Judicial Legal Council and the salaries of judges. The question of gender equality within the judiciary was also raised. We noted that there were still shortcomings in the law and practices that needed to be addressed, such as the criminal law (with regard to the excessively long prison sentences and the use of pre-trial detention), the NGO legislation and the legislation on political parties and its financial provisions. We also raised the question of the online media and bloggers, as we noted that a number of bloggers were on Amnesty International's list of prisoners of conscience. The Minister of Justice informed us of the recent amnesty law aimed to reduce prison overcrowding and the new law increasing the threshold required for the criminalisation of economic offences. He referred to the ongoing fruitful cooperation with the Council of Europe and notably the media project, civil society dialogue project and anti-corruption project.

19. In view of the above, we reiterate the need to address the root causes of the problems and to restore confidence in the justice system. We welcome the readiness expressed by the Minister of Justice of Azerbaijan to closely cooperate with the Council of Europe with regard to the justice reform.

20. Overall, it is of utmost importance to ensure full implementation of decisions of the European Court of Human Rights, which is a strict obligation on all members of the Council of Europe. In the meetings with the authorities, we reiterated the Council of Europe's readiness to help find solutions to the outstanding problems, and we insisted that the Secretary General's initiative under Article 52 of the Convention can be instrumental in this regard.

IV. Elections related issues

21. On 4 May 2016, the Chairman of the Milli Mejlis invited the Assembly to observe the repeat election in District 90 to be held on 18 June 2016. On 26 May 2016, the Bureau decided to ensure a presence at this repeat election with a delegation of three members.

22. After the monitoring rapporteur visit, we were part of the presence of the Assembly during the repeat of parliamentary elections. The findings related to these elections can be found in the Memorandum prepared at the end of the presence and presented to the PACE Bureau on 24 June 2016.

23. We would like to add to these findings a specific aspect related to Ilgar Mammadov, who we met in detention. During our meeting, he said that his right to stand as a candidate in District 90 for the repeated parliamentary elections had not been respected. During our presence for the repeat elections, special attention was paid to the fulfilment of legal requirements for the registration of candidates. In particular, the question of the respect of Ilgar Mammadov's right to be a candidate was raised and we had access to the documents at the Constituency Electoral Commission indicating that he had not complied with the legal requirements as he had not submitted the required number of signatures to support his candidature.

V. Recent developments

24. Although the issue of the reform of the constitution was not discussed during our fact-finding visit and despite the fact that the announcement of the referendum on the constitutional amendments came one month after our visit, we deem it important to briefly mention it in the present note in view of its importance for the country.

25. On 18 July 2016, the Referendum Act on "Making Changes to the Constitution of Azerbaijan Republic" (including amendments to 29 articles of the Constitution) was submitted by the President to the Constitutional Court for review. On 25 July, the Constitutional Court approved the draft Referendum Act proposed. On 26 July, the President signed an order on holding a referendum on amendments to the Constitution on 26 September 2016.

26. Extra-parliamentary opposition leaders and civil society activists have expressed concern about the process as well as the content of the proposed constitutional changes: according to them, the changes that were presented during the summer recess of parliament did not allow for public debate; if adopted, they would allegedly restrict freedoms and human rights (notably the property right, freedom of expression, right of association and right of access to information), further strengthen the executive branch of power and weaken the parliament.

27. In 2009, in its opinion on the draft amendments to the constitution of the Republic of Azerbaijan,³ the Venice Commission already noted that the pace of the adoption of the reform had been quite rushed given the importance of the issues at stake and the need to enable the population to be fully acquainted with the various implications of the reform.

28. At its meeting of 5 September 2016, the Bureau of the Assembly requested the Venice Commission to provide an opinion on the draft amendments to the Constitution of Azerbaijan submitted to the referendum of 26 September 2016. The Bureau also constituted an ad hoc committee to conduct an assessment mission of the referendum, composed of one representative of each political group as well as the co-rapporteurs of the Monitoring Committee.

³ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)010-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)010-e).

APPENDIX I – Programme of the fact-finding visit to Baku (15-17 June 2016)**Wednesday, 15 June 2016**

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| 10:00 | Meeting with H.E. Mr Ilham Aliyev, President of the Republic of Azerbaijan |
| 13:30-14:30 | Meeting with civil society representatives (*) |
| 14:30-15:30 | Meeting with media representatives (*) |
| 15:30-16:30 | Meeting with extra-parliamentary opposition parties (*) |
| 16:30-17:30 | Meeting with recently released persons, including Mr Siraj Karimov, Mr Hilal Mammadov, Mr Yadigar Sadigov, Mr Rashad Hasanov, and Mr Intigam Aliyev (*) |

Thursday, 16 June 2016

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| 09:45-10:45 | Meeting with Mr Zakir Garalov, Prosecutor General |
| 11:00-12:00 | Meeting with Mr Mubariz Gurbanli, Chairperson of the State Committee for Work with Religious Organisations |
| 12:15-13:15 | Meeting with Mr Fikrat Mammadov, Minister of Justice |
| 13:30-14:00 | Meeting with the members of the Azerbaijan Delegation to the Assembly |
| 14:00-15:30 | Lunch hosted by the Azerbaijan Delegation to the Assembly |
| 15:30-16:30 | Meeting with Mr Ogtay Asadov, Chairperson of the Milli Mejlis |
| 16:45-17:45 | Meeting with the leadership of the Caucasian Muslims Office |
| 18:15-19:15 | Meeting with Ms Khadija Ismayilova (*) |
| 20:30 | Working diner with selected Ambassadors (*) |

Friday, 17 June 2016

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| 09:30-10:30 | Meeting with Mr Ilgar Mammadov at the Penitentiary Establishment No: 2 (Baku) |
| 13:00-14:00 | Meeting with Mr Mazahir Panahov, Chairperson of the Central Election Commission (in the presence of Mr Alain Destexhe (Belgium, ALDE) and Mr Bogdan Torcătoriu, PACE Secretariat) |

(*) organised by the Council of Europe Office in Baku