

**DECLASSIFIED<sup>1</sup>**  
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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 (5 – 9 April 2016)

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

#### I. Introduction

1. I was appointed co-rapporteur for Azerbaijan on 9 December 2015 in replacement of Mr Iwiński who had left the Assembly. In the meantime, the other recently appointed co-rapporteur, Mr Conde, also left the Assembly, and his position became vacant. I consequently carried out this fact-finding visit to Baku by myself. Mr Preda was appointed co-rapporteur for Azerbaijan on 19 April 2016, after my visit. As the present note focuses on a visit prior to his appointment, the findings of this information note are entirely my own.

2. The Assembly adopted its most recent resolution on the functioning of democratic institutions in Azerbaijan in June 2015, in which it condemned what it called “the crackdown on human rights in Azerbaijan” and called for an end to the “systemic repression” of human rights defenders, the media and those critical of the government, including politically motivated prosecutions. The Assembly called on the authorities “to use all available legal tools to release those prisoners whose detention gives rise to justified doubts and concerns”, and made a series of recommendations to the authorities of Azerbaijan as part of the Assembly’s ongoing monitoring of the country – including steps to reinforce democratic “checks and balances” in the system, ensure a fairer electoral framework, and further boost judicial independence.

3. My visit was intended to follow the implementation of the resolution and mainly focused on the post-election political climate, the overall human rights situation, the administration of justice, including independence of justice and pre-trial detention, with a special focus on the implementation of the European Court of Human Rights’ case law.

4. In view of the developments before and during my visit, that is the recent escalation of violence along the contact line in Nagorno-Karabakh and the other occupied territories of Azerbaijan and the reports of civilian casualties and deaths on both sides, I expressed strong concern and insisted that negotiations in the framework of the Minsk group should urgently be resumed for a peaceful resolution of this ongoing tragedy. The co-chairs of the OSCE Minsk Group were also in Baku at the time of my visit to help find an agreement between the two sides.

5. In Baku, I met with the President of the Republic, the Speaker of Parliament, the President of the Constitutional Court, the Ombudsperson, the Justice Minister, the Prosecutor General, the Chairman of the Central Election Commission and Members of Parliament, including the Azerbaijani delegation to the Assembly. I also met representatives of extra-parliamentary opposition parties, civil society and the international community, lawyers and media representatives. I visited Khadija Ismayilova in detention and had meetings with persons who were recently released, including Leyla and Arif Yunus, Intigam Aliyev, Tofiq Yagublu and Rashadat Akhundov.

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<sup>1</sup> Document declassified by the Monitoring Committee at its meeting on 23 May 2016.

6. I would like to thank the Parliament of Azerbaijan 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. Recent developments

7. Ahead of my visit, fourteen<sup>2</sup> prisoners<sup>3</sup> were released based on a presidential pardon decree signed on 17 March 2016.<sup>4</sup> In addition, Rauf Mirkadirov was released on 17 March 2016 by the Baku Court of Appeal, which commuted his six-year prison sentence into a suspended five-year sentence. Similarly, Intigam Aliyev was released on 28 March 2016 after the Plenum of the Supreme Court replaced his sentence by a five-year suspended sentence under Article 70 of the Criminal Code. According to Amnesty International, seven<sup>5</sup> “prisoners of conscience” remain behind bars in Azerbaijan, including Khadija Ismayilova whom I visited in jail and Ilgar Mammadov whom the PACE President visited during his official visit to Azerbaijan some weeks before.<sup>6</sup>

8. I had meetings with some recently released persons, in particular Mr. Intigam Aliyev, Mr Tofiq Yagublu, and Mr Rashadat Akhundov, who explained the legal and practical difficulties they faced (see below section III). I visited Ms Leyla and Mr Arif Yunus in their home and I was alarmed by their poor physical condition which clearly required prompt medical action. After my visit, on 18 April, the Supreme Court lifted the travel ban and allowed them to leave Azerbaijan for health reasons to get medical treatment abroad. I heartily welcomed the decision of the Azerbaijan authorities allowing Mr and Ms Yunus to leave the country for health reasons and join their daughter in the Netherlands.

9. The recent developments in the country gave me reason to hope that there would soon be further releases. During my visit, I welcomed the recent release of some human rights defenders, political activists and journalists which I considered a positive first step, and expressed the hope that other activists, including Ms Khadija Ismayilova and Mr Ilgar Mammadov, would also be released soon. I discussed this issue with the President of the Republic, the Minister of Justice, the General Prosecutor and the Members of Parliament. Discussions focused on the cases of activists currently in detention but also on broader related issues including possible reforms to prevent such situations in the future (see below sections III and IV).

10. In this context, I discussed with the authorities the possibility of addressing, in close cooperation with the Council of Europe, a number of priority areas including the independence and functioning of the judiciary, sanctions and pre-trial detention in the criminal justice system, NGO legislation and the electoral law.

## III. Justice system

11. During my visit, we considered specific ongoing cases of human rights defenders and political activists but our discussions mainly focused on reforms of the justice system. It is important to address the causes of the arrest, detention, prosecution and conviction of political activists, media representatives and human rights defenders over recent years. The issue of confidence in the justice system was raised in a number of meetings as well as questions related to the independence of the judiciary. In this context, I proposed to the authorities to work together on a number of priority areas for reforms.

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<sup>2</sup> Namely:

- human rights defenders: Taleh Khasmammadov, Rasul Jafarov, Anar Mammadli (Vaclav Havel price)
- chairman of the National Statehood party Nemat Penahli
- NIDA-Members: Rashad Hasanov, Rashadat Akhundov, Mammad Azizov,
- Musavat members: Tofiq Yaqublu, Yadigar Sadiqov, Akif Muradverdiyev (former government official)
- Journalists: Parviz Hasimov, Hilal Mammadov
- bloggers Siraj Karimli and Omar Mammadov

<sup>3</sup> these persons were part of the “list of political prisoners” prepared by different NGOs

<sup>4</sup> the presidential pardon decree released in total 148 persons from detention

<sup>5</sup> namely:

- investigative journalist Khadija Ismayilova,
- prominent opposition activist Ilgar Mammadov,
- bloggers Rashad Ramanazov and Elvin Karamov,
- political activist Faraj Karimov,
- NIDA members Abdul Abilov and Ilkin Rustamzadeh

<sup>6</sup> A so-called “list of political prisoners” prepared by Azerbaijani NGOS includes a total of 76 names, mostly religious activists.

12. In the case of *Ilgar Mammadov v. Azerbaijan*,<sup>7</sup> and more recently *Rasul Jafarov v. Azerbaijan*, the European Court of Human Rights explicitly stated that the domestic courts had limited their role to one of mere automatic endorsement of the prosecution's requests and that they could not be considered to have conducted a genuine review of the "lawfulness" of the applicant's detention (violation of Article 5 § 4 of the European Convention on Human Rights). The Court also considered that the applicants had been detained for purposes other than having committed an offence and found a violation of Article 18 of the Convention taken in conjunction with Article 5. In its decision of March 2016 in the framework of the enhanced supervision of the *Ilgar Mammadov* case, the Committee of Ministers reiterated his concerns that the applicant had still not been released and that no domestic court had addressed the violation of Article 18 combined with Article 5 of the Convention.

13. In my discussions with the Minister of Justice and the General Prosecutor, I was informed about the reforms carried out in the field of the judiciary in partnership with Council of Europe experts, notably the selection procedure for judges and prosecutors. The Minister of Justice referred to a new legal change allowing judges to report to the Judicial Legal Council in case of interference. He also informed me of the ongoing project on the modernisation of the judicial system and the e-justice pilot project

14. We also discussed the issue of pre-trial detention and I was informed about the analysis of judicial practice carried out by the Plenum of the Supreme Court concerning the use of pre-trial detention. We also discussed the problem of high criminal sanctions, and I was told that the legislation is currently being amended to decrease the level of prison sentences.

15. During the meetings with lawyers and civil society I was informed of the difficulties faced by lawyers defending human rights defenders and political activists, who are allegedly subject to pressure. Some of them have reportedly been disbarred from legal practice or have been prosecuted.

16. As mentioned above, we discussed with the authorities the possibility of strengthened cooperation with the Council of Europe so as to further improve the independence and functioning of the judiciary and improve the criminal justice system in line with Council of Europe standards.

#### **IV. Human rights situation**

17. Things have started moving over recent months in the field of the human rights in Azerbaijan. A number of human rights defenders and activists have been released by presidential pardon and court decisions in recent weeks. However, some human rights defenders and activists are still detained. The recent releases are positive steps and I hope that others will follow. I am confident that these positive developments will pave the way towards enhanced cooperation between the authorities and the Council of Europe and to further progress in the field of human rights protection.

18. During my visit, I met with Mr Intigam Aliyev, Mr Tofiq Yagublu and Mr Rashadat Akhundov who had all recently been released. While Mr Tofiq Yagublu and Mr Rashadat Akhundov had been pardoned, Mr Aliyev had been conditionally released by a court judgement. I was told that while a pardon clears the individual's criminal record, conditional release through a court decision implies constraints such as presentation at a police station, a travel ban, prohibition of exercising public functions, freezing of bank accounts, etc. Mr Intigam Aliyev also raised the issue of his office being illegally locked and the confiscation by the General Prosecutor's Office of the files of the cases that he had been defending in front of the European Court of Human Rights. I listened to their reports but I was unable to look further into these matters during my visit due to time constraints.

19. In discussions with representatives of NGOs, media and recently released persons as well as lawyers, I was informed of the legal shortcomings and/or shortcomings in the implementation of legislation such as the NGO law, the law on freedom of assembly, and media laws. In particular, I was informed about some legal and practical obstacles preventing NGOs from operating in Azerbaijan. Representatives of the international community stressed the need to revise the legislation on grants as they had been prevented from allocating foreign grants to local civil society organisations. They also raised the issues faced by local branches of foreign and international NGOs.

20. In my meetings with the authorities, we discussed the need to facilitate the work of NGOs. The Minister of Justice referred to the measures taken to increase the transparency of the implementation of the NGO legislation and referred to the e-services put in place for the registration of NGOs.

<sup>7</sup> [Ilgar Mammadov v. Azerbaijan](#) (application no. 15172/13), 22 May 2014

21. As mentioned above, I discussed with the authorities the possibility of working closely with the Council of Europe on the reform of the NGO legislation and its implementation to ensure compliance with European standards in respect of democracy and human rights.<sup>8</sup> In the case *Rasul Jafarov v. Azerbaijan*,<sup>9</sup> of March 2016, the European Court of Human Rights considered that all the punishable acts attributed to the applicant had essentially stemmed from the fact that he had operated an NGO lacking State registration and that he had failed to register grants. According to the Court, the arrest and detention of Rasul Jafarov in 2014 had been conducted against the background of increasingly stringent legislation in the field of NGO activities and the tightening of the authorities' policy against civil society. The Court came to the conclusion that the facts relied on by the prosecuting authorities had not been sufficient for a reasonable suspicion that he had committed any of the criminal offences with which he had been charged. On this basis, the Court found violations of the European Convention on Human Rights regarding his arrest and detention (Articles 5§1, 5§4).

22. I was told by interlocutors from the civil society and from independent media that their bank accounts had been frozen and that they were prevented from leaving the country, although there were no court decisions ordering a travel ban or the freezing of their bank accounts. I raised this issue with the General Prosecutor, with the Chairman of the Constitutional Court and with the Minister of Justice and I was told that such measures would be possible only based on court decisions. According to the Chairman of the Constitutional Court, in case there had not been a court decision ordering the freezing of a bank account, a complaint could be lodged before the administrative economic courts.

23. Some of the media representatives we met referred to the economic pressure exerted through distribution, printing, and advertising. They also considered that the allocation of State advertising and State subsidies is not conducted transparently.

24. During my meeting with representatives of extra-parliamentary opposition leaders, Popular Front Party Chairman Ali Kerimli informed me that the authorities had prevented him from travelling abroad by refusing to renew his passport following his participation in a Council of Europe event on the 2005 general elections in Azerbaijan. He mentioned that the European Court of Human Rights had ruled in 2015 that the *de facto* travel ban imposed on him by refusing him a new passport constituted a violation of Article 2 § 2 of Protocol 4 but that the judgement had not been implemented to date.<sup>10</sup>

25. I had a meeting with the Ombudsperson during which I underlined the essential role of the Ombudsperson in protecting individual rights. I was informed that the Ombudsman is the National Preventive Mechanism against torture in the framework of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

26. In my meetings with the authorities I raised the issue of the draft law "on the possibility of the implementation by the Republic of Azerbaijan of the decision of the interstate body for the protection of human rights and freedoms" pending in parliament. The draft would reportedly give the Constitutional Court new powers in relation to the definition of the possibility of execution of decisions passed by international organisations on human rights and freedoms in Azerbaijan. The draft law could be comparable to the one adopted in the Russian Federation.<sup>11</sup> In the meetings in parliament, I was informed that the draft was an initiative from a single MP and that it needed 63 signatures in order to be put on the agenda. Such proposal would also require a constitutional change with a qualified majority of 95 votes, and a delay of 6 months between the two readings. I expressed my concern regarding this initiative that would impede the unconditional implementation of decisions of the European Court of Human Rights, which is a binding obligation on all members of the Council of Europe.

## V. Election-related issues

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<sup>8</sup> Venice Commission, [CDL-AD\(2011\)035](#), op. cit., paragraph 117; Venice Commission [CDL-AD\(2014\)043](#), "Opinion on the Law on non-governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan", adopted by the Venice Commission at its 101st Plenary Session (Venice, 12-13 December 2014); Report of 6 August 2013 by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Azerbaijan from 22 to 24 May 2013 [CommDH\(2013\)14](#); Report of 23 April 2014 of the Commissioner for Human Rights "Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property", [CommDH\(2014\)10](#).

<sup>9</sup> [http://hudoc.echr.coe.int/eng/?i=001-161416#{"itemid":\["001-161416"\]}](http://hudoc.echr.coe.int/eng/?i=001-161416#{)

<sup>10</sup> European Court of Human Rights *Kerimli v. Azerbaijan* (application no. 3967/09) Judgment of 16 July 2015.

<sup>11</sup> With regard to the Russian legislation: see the Venice Commission's interim opinion of March 2016 determining that empowering the Russian Constitutional Court to declare international decisions, including judgments of the European Court of Human Rights, as "unenforceable" is incompatible with Russia's international legal obligations.

27. As member of the delegation that had observed the general elections in November 2015, I considered it important to discuss the follow up of the elections during the fact-finding visit.

28. The report<sup>12</sup> of the PACE *ad hoc* committee for the 2015 general election observation concluded that the increase in voter turnout and the transparency of voting and counting procedures demonstrated a step forward taken by Azerbaijan towards free, fair and democratic elections. The committee was of the opinion that the result of this vote expressed the will of the Azerbaijani people. While noting some irregularities during the voting and counting processes, the report considered that these shortcomings did not constitute systemic violations of the electoral code. The *ad hoc* committee called on the Central Election Commission (CEC) to duly investigate and report on this irregularity and in the meantime welcomed the decision by the CEC to cancel the results in constituency No. 90, based on the aforementioned irregularities. Besides its assessment of the conduct of the elections, the committee noted with regret that serious concerns in the sphere of human rights still remained in Azerbaijan.

29. During my visit, I raised the issue of the 90th Agdash District where the results of the last elections were cancelled based on irregularities and where the re-runs have not yet been organised, despite the existing legal deadline. The Chairman of the CEC informed me that partial elections would be organised within the next three months in this constituency. After I returned from my visit, the President of the Republic indeed signed an order setting the date for the partial elections in this district on 18 June 2016.

30. Discussions also focused on possible cooperation with the Council of Europe on the reform of the electoral law and practice so as to implement the Council of Europe recommendations in the field of elections. I proposed that this should be one of the priority areas in which we could work together. The Venice Commission's expertise would be essential in this regard.

31. In a judgment of June 2015 in the *Tahirov v. Azerbaijan* case,<sup>13</sup> reiterated in October and December 2015 in the judgements in the cases *Annagi Hajibeyli v. Azerbaijan*, *Vugar Aliyev and other v. Azerbaijan*, *Bagirov and others v. Azerbaijan* and *Gasimli and others v. Azerbaijan*, the European Court of Human Rights held that the signature verification procedures for the registration of candidates in elections did not provide sufficient safeguards to prevent arbitrary decisions. The Court therefore concluded a violation of Article 3 of Protocol No. 1 following an arbitrary refusal to register an independent candidate in the 2010 parliamentary elections. In the case *Gahramanli and Others v. Azerbaijan*,<sup>14</sup> the Court ruled that the current system of electoral administration in Azerbaijan, which results in a particularly high proportion of pro-ruling-party members making up the structural composition of the electoral commissions, had been one of the systemic factors contributing to the ineffectiveness of the examination of the applicants' complaints on electoral irregularities.

32. In its decision, adopted on 9 December 2015, in the framework of the supervision of the execution of the group of cases of the European Court of Human Rights *Namat Aliyev v. Azervaijan*,<sup>15</sup> the Committee of Ministers expressed their deep concern that the recent parliamentary elections had been held without implementation of the necessary reforms required to prevent arbitrariness. The Committee of Ministers strongly reiterated their demands for rapid progress in the adoption of these reforms and their call on the authorities to seize all opportunities for co-operation with the Council of Europe, in particular with the Venice Commission, so as to take into account the recommendations of the Venice Commission and OSCE/ODIHR on the electoral system of Azerbaijan.

<sup>12</sup> Election observation [report](#) Doc. 13923, 20 November 2015.

<sup>13</sup> [Tahirov v. Azerbaijan](#) (Application no. [31953/11](#)) 11 June 2015.

<sup>14</sup> [Gahramanli and others v. Azerbaijan](#) (Application no. [36503/11](#)) 8 October 2015.

<sup>15</sup> Supervision of the execution of the Court's judgments *Namat Aliyev v. Azervaijan* (Application No. 18705/06), Committee of Minister's [Decision](#) of 9 December 2015.

APPENDIX I

**Programme of the fact-finding visit to Baku (5-9 April 2016)**

**Tuesday, 5 April 2016**

*Evening*            *Arrival of members of the Delegation*

**Wednesday, 6 April 2016**

9:30 – 10:30    Meeting with the President of the Republic of Azerbaijan H.E. Mr Ilham Aliyev  
11:00 – 12:00   Meeting with civil society representatives (\*)  
12:00 – 13:00   Meeting with media representatives (\*)  
14:45 – 15:45   Meeting with Mr. Fikrat Mammadov, Minister of Justice  
16:00 – 17:00   Meeting with Mrs Elmira Suleymanova, Ombudsman  
19:00            Dinner hosted by Mr Samad Seyidov, Chairman of the Azerbaijan Delegation to the Assembly

**Thursday, 7 April 2016**

9:00 – 9:45     Meeting with lawyers (\*)  
10:00 – 10:45   Meeting with recently released persons, namely Mr. Intigam Aliyev, Mr. Tofiq Yagublu, Mr Rashadat Akhundov (\*)  
11:00 – 12:00   Meeting with Mr Zakir Garalov, Prosecutor General of Azerbaijan  
12:15 – 13:15   Meeting with Mr Farhad Abdullayev, Chairman of the Constitutional Court  
13:30 – 14:30   Meeting with Ms Leyla and Mr Arif Yunus (\*)  
15:30 – 16:30   Meeting with Mr Mazahir M. Panahov, Chairman of the Central election Commission  
17:00 – 18:00   Meeting with extra-parliamentary opposition parties(\*)  
20:00            Working diner with selected Ambassadors (\*)

**Friday, 8 April 2016**

10:00 – 12:00   Meeting with Ms Khadija Ismayilova at the Penitentiary Establishment No. 4 in Baku  
14:00 – 15:00   Meeting with Mr Ali Huseyinli, Chairman of the Legal Policies and State Structuring Committee and of the Human Rights Committee of the Milli Mejlis  
15:00 – 16:00   Meeting with the Chairman and members of the Azerbaijan Delegation to the Assembly  
16:00 – 17:00   Meeting with Mr Ogtay Asadov, Chairman of the Milli Mejlis

**Saturday, 9 April 2016**

*morning*            *Departure of members of the delegation*

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

## APPENDIX II

**Statement by PACE monitor, ending visit to Azerbaijan**

Stefan Schennach (Austria, SOC), co-rapporteur of the Parliamentary Assembly of the Council of Europe (PACE) for the monitoring of Azerbaijan, has expressed strong concern at the recent escalation of the situation along the contact line in Nagorno-Karabakh and the occupied territories and the reports of civilian casualties and deaths on both sides.

Speaking at the end of a three-day fact-finding visit to the country (6-8 April 2016), Mr Schennach said he had welcomed the cease-fire and insisted that negotiations should urgently resume towards a peaceful resolution of this ongoing tragedy. He noted that the co-chairs of the OSCE Minsk Group were also in Baku at the time of his visit to help find an agreement between the two sides.

The co-rapporteur had a very constructive meeting with the President of the Republic. Mr Schennach welcomed the release of some human right defenders and political activists earlier in March after a presidential pardon and court decisions, describing this as a positive step. "I discussed with the authorities the cases of activists currently in detention and the recent developments in the country give us reason to hope that there will soon be further releases," he said. Issues related to the legislation governing NGOs in Azerbaijan and its implementation were also discussed, in particular the need to facilitate the work of activists, independent media and NGOs, and to bring the legislative framework fully into line with Council of Europe standards: "NGOs contribute to the richness of the democratic process, and should be encouraged, not impeded."

Various interlocutors, including representatives of civil society, expressed their concerns and lack of confidence in the independence and functioning of the judiciary. "During my meetings, the authorities assured me that the country remains committed to fulfilling its obligations and commitments towards the Council of Europe, and I was informed of recent reforms in this field," Mr Schennach said. "It is of the utmost importance however that further reforms be carried out to strengthen the independence of the judiciary and to restore trust in the judicial system."

Discussions also focused on the political situation following the November 2015 general elections. "It is important to take the necessary measures to improve the electoral legal framework in conformity with Council of Europe recommendations," the co-rapporteur said. He welcomed the authorities' reported efforts to organise partial elections soon in constituency No. 90, where the results of the last elections had been cancelled based on irregularities.

Mr Schennach said it was essential to maintain the current momentum and continue dialogue in the above-mentioned priority areas. "The Council of Europe is ready to assist the competent authorities with finding ways to align domestic law with Council of Europe standards and to ensure that the law is applied in line with the case-law of the European Court of Human Rights," Mr Schennach said. "I believe the Secretary General's initiative under Article 52 of the Convention can be instrumental in finding solutions to some of the outstanding problems," he added.

The co-rapporteur expressed his concerns regarding a parliamentary initiative that would impede the unconditional implementation of decisions of the European Court of Human Rights, which is a binding obligation on all members of the Council of Europe.

During his visit, the co-rapporteur met with the President of the Republic, the Speaker of Parliament, the President of the Constitutional Court, the Ombudsperson, the Justice Minister, the Prosecutor General, the Chairman of the Central Election Commission and members of parliament, including the Azerbaijan delegation to the Assembly. He also met representatives of extra-parliamentary opposition parties, civil society and the international community, lawyers and media representatives. He visited Khadija Ismayilova in detention and had meetings with persons who were recently released, including Leyla and Arif Yunus, Intigam Aliyev, Tofiq Yagublu and Rashadat Akhundov.