

Provisional edition

## The functioning of democratic institutions in Azerbaijan

Resolution 1614 (2008)<sup>1</sup>

1. Growing oil and gas business has strengthened the economy of Azerbaijan. With a gross domestic product growth in 2007 of 25 percent, the Azerbaijani authorities are facing a major challenge as they try to transform important dividends of the oil business into the sustainable development of society.
2. On 15 October 2008, Azerbaijan will be holding its second presidential election since its accession to the Council of Europe. Considering that all ballots held since accession have generally failed to meet basic democratic standards, the Parliamentary Assembly considers the forthcoming ballot to be crucial for Azerbaijan's democratic credibility. Azerbaijan cannot afford to fall short again in meeting Council of Europe commitments and standards for democratic elections.
3. When joining the Council of Europe in 2001, Azerbaijan clearly opted for European standards with respect to democracy, the rule of law and human rights. The Assembly has been following closely the developments in the country and notes that a number of reforms are underway, in co-operation with the Council of Europe.
4. However, the Assembly considers that the success of the reforms is less a matter of the letter of the laws than a matter of their implementation and can only express great concern about the deteriorating human rights situation which undermines any efforts made by the authorities to meet basic democratic standards in the forthcoming presidential election.
5. The Azerbaijani society needs concrete reconciliation measures in order to foster the process of democratisation. Much remains to be done to ensure that the Parliament plays its role as a public forum for political debate. Dialogue should be urgently established between the ruling majority and the opposition both inside and outside Parliament if the political climate in the country is to be improved and the population's confidence in the electoral process restored.
6. The Assembly regrets that the main opposition parties did not participate in a discussion of amendments to the Electoral Code of Azerbaijan concerning the composition of the electoral commissions and the complaint and appeal procedures.
7. The Assembly calls on all opposition parties to take part fully in the electoral process and to appoint urgently the two remaining members of the Central Electoral Commission.
8. Furthermore, the Assembly urges the Azerbaijani authorities to guarantee the opposition's right to hold public rallies.
9. Restrictions on the freedom of expression, the harassment and intimidation of opposition journalists through defamation court proceedings, imprisonment, physical attacks and threats, as well as limitations of the right to freedom of assembly and association are matters of great concern which the Assembly considers inadmissible in a Council of Europe member state. In order for Azerbaijan to honour its obligations and commitments to the Council of Europe, these issues have to be addressed without further delay and in time before the next presidential election.
10. The Assembly condemns the recurrent attacks against the opposition newspaper Azadliq and in particular the arrests, judicial proceedings and incidents of violence against its reporters and staff, as well as intimidation through financial pressure. It urges the Azerbaijani authorities to ensure the effective prosecution of perpetrators of all attacks against journalists, including a proper investigation into the case of reporter Agil Khalil, who has been recently stabbed by unknown assailants.
11. Judicial corruption and the lack of independence of the judiciary remain serious problems in Azerbaijan, as the authorities themselves acknowledge. The shortcomings of the Azerbaijani judicial system results in the creation of new cases of unfair and politically motivated trials and imprisonments. In this regard, the Assembly welcomes the constructive attitude of the Azerbaijani authorities and asks them to enhance their efforts to effectively eradicate corruption among judges, to further reform and train the Azerbaijani judiciary and to improve its negative image in the country.

12. Numerous cases of ill-treatment and allegations of torture by law-enforcement officials during police custody or pre-trial investigations, as well as in the army, for the purpose of extracting confessions or obtaining incriminating statements by witnesses, continue to be reported. Regrettably, investigations into such behaviour have rarely led to the prosecution of officers who have committed such abuses.

13. Recalling its [Resolutions 1457](#) (2005) and [1545](#) (2007), the Assembly does not consider the issue of political prisoners to have been resolved, despite efforts made by the Azerbaijani delegation to the Assembly in the search for a definitive solution to this issue, within the framework of the Task Force composed of representatives of the authorities and of human rights defenders.

14. The Assembly takes note of the presidential pardon decrees of 28 December 2007 and 18 March 2008, which led to the release of respectively 114 and 59 prisoners and included 6 journalists and 23 prisoners appearing on the list of prisoners drawn up by human rights defenders. It also welcomes the recent release of Mr Sahavat Gumbatov and Mr Ramin Tagiyev by court decisions. It strongly regrets, however, that none of the prisoners referred to in [Resolution 1545](#) (2007) has been released and that the three journalists associated with the most vocal opposition newspapers, Ganimat Zahidov, Sakit Zahidov and Eynulla Fatullayev, remain in prison.

15. The Assembly can only but regret that the amnesty law adopted by the Parliament of Azerbaijan, on 8 May 2007, which led to the release of 9,000 persons convicted of petty crimes, did not include any of the prisoners in respect of whom the Assembly has repeatedly expressed concern.

16. In view of the above, the Assembly recalls its [Resolution 1545](#) (2007) on the honouring of obligations and commitments by Azerbaijan and urges the Azerbaijani authorities to undertake a number of measures without further delay.

17. As regards the preparation of the presidential election:

17.1. the Assembly takes note of the adoption of the revised Electoral Code by the Parliament of Azerbaijan but regrets that some of the recommendations made by the European Commission for Democracy through Law (Venice Commission) are not fully addressed. For the forthcoming elections to be free and fair, the Central Electoral Commission should now take all measures to ensure that:

17.1.1. the composition of the Central Electoral Commission, and also of the territorial and precinct electoral commissions, are balanced and not dominated by pro-government forces;

17.1.2. independent candidates in the Central Electoral Commission and territorial electoral commissions are, to the largest possible extent, agreed upon by consensus;

17.1.3. the posts of Chairperson, Vice-Chairperson and Secretary of electoral commissions at all levels are fairly distributed;

17.1.4. an efficient complaints and appeals procedure is guaranteed

17.2. the Assembly underlines that the rules of the electoral campaign should be clear long before the beginning of the campaign itself. In this regards, to date the President of Azerbaijan has not yet signed the law on the revised Electoral Code and according to the law currently in force the electoral campaign should have started on 16 June, which is not the case. The ambiguity of this situation is a serious subject of concern for the Assembly;

17.3. the Assembly welcomes the adoption on 30 May 2008 of the amendments to the revised 1998 law on freedom of assembly by the Parliament of Azerbaijan, in compliance with the recommendations of the Venice Commission, and urges the authorities to take appropriate measures to ensure that the prompt implementation of the relevant legislation respects fully Article 11 of the European Convention of Human Rights (hereafter the Convention), as interpreted by the European Court of Human Rights;

17.4. a climate of confidence should be restored, which implies that dialogue between the ruling majority and the opposition, both inside and outside Parliament, should be urgently established;

17.5. political parties and blocs should be given free broadcast time and print space in the state funded media, under equal conditions, as stipulated in the Electoral Code of Azerbaijan;

17.6. all relevant measures should be taken to prepare the ground for a free and fair presidential campaign, as well as elections, so that mistakes from the last ballot are not repeated;

17.7. a clear message should be passed, in time for the 2008 presidential election and at the highest political level, that electoral fraud will not be tolerated.

18. As regards the fight against corruption and money laundering:

18.1. the Assembly welcomes the efforts made by the authorities to address the problem of corruption, which at present continues to affect all levels of society and threatens the economic growth, as well as the social and political

development of the country. In particular, the Assembly welcomes the adoption of a new National Strategy "on increasing transparency and the fight against corruption", as well as of an action plan for its implementation for the period 2007-2011, prepared in close co-operation with the Council of Europe;

18.2. the Assembly urges the Parliament to adopt the Law on Money Laundering and Counter-Financing of Terrorism, the Law on Conflict of Interest and the Law on Responsibility of Legal Persons for Corruption Offences, in line with Council of Europe experts recommendations;

18.3. the Assembly urges the Azerbaijani authorities to implement without further delay the recommendations made by the Group of States against Corruption (GRECO) and the Committee of Experts on measures to counter money-laundering and financing of terrorism (MONEYVAL).

19. As regards freedom of expression, the Azerbaijani authorities should:

19.1. initiate the legal reform aimed at the decriminalisation of defamation and the revision of the relevant civil law provisions to ensure respect of the principle of proportionality, as recommended in [Resolution 1545 \(2007\)](#); in the meantime, a political moratorium should be re-introduced so as to put an end to the use of defamation lawsuits as a means of intimidating journalists;

19.2. guarantee the effective prosecution of perpetrators of attacks against journalists;

19.3. implement the recommendations made by the Council of Europe experts on the Law on Television and Radio Broadcasting and the Degree of the President approving the regulations of the National Television and Radio Broadcasting Council and amend the relevant legislation so as to:

19.3.1. clarify the role of the state broadcaster as compared to that of the public broadcaster;

19.3.2. guarantee the independence of the National Television and Radio Broadcasting Council, including from a financial point of view;

19.3.3. define the terms for the award of broadcasting licences more clearly and put an end to state interference with broadcasting.

20. As regards freedom of association

20.1. the Assembly is particularly concerned by the Khatai District Court's decision of 14 May 2008 to revoke and annul the registration of the Election Monitoring Centre (EMC), a well-known and recognised non-partisan domestic election observation organisation, following an appeal by the Ministry of Justice;

20.2. the Assembly urges the Azerbaijani authorities to take all necessary measures to guarantee freedom of association in both law and practice and in compliance with Article 11 of the Convention, as interpreted by the European Court of Human Rights, and to execute the European Court of Human Rights' judgment in the case *Ismayilov v. Azerbaijan*, finding a violation of Article 11 of the Convention.

21. As regards the reform of the judiciary:

21.1. concrete measures should be taken to put an end to the strong influence still exerted by the executive over the judiciary branch;

21.2. the right to a fair trial should be guaranteed and measures should be taken to ensure that the implementation of the relevant legislation respects fully the requirements of Article 6 of the Convention, as interpreted by the European Court of Human Rights;

21.3. the Assembly welcomes the adoption of Codes of conduct for both judges and public prosecutors in accordance with the 2006 Decree on the reform of the judiciary and in line with the Council of Europe expert recommendations.

22. As regards the follow-up to the issue of alleged political prisoners:

22.1. the Assembly reiterates its call on the Azerbaijani authorities to make use of every legal remedy (amnesty, review of cases by higher-instance courts, conditional release for health reasons, pardon) so as to settle once and for all this problem;

22.2. the Assembly calls upon the Azerbaijani authorities to consider the release of Natiq Efendiyev, Rasim Alekperov, Ruslan Bashirli, Akif Huseynov and Telman Ismayilov on the basis of humanitarian grounds;

- 22.3. the Assembly condemns the lack of transparency and fairness in the relevant investigation and court proceedings and demands the immediate release of imprisoned opposition journalists Ganimat Zahidov, Sakit Zahidov and Eynulla Fatullayev.
23. As regards conditions of detention, the Assembly urges the Azerbaijani authorities to:
- 23.1. implement the recommendations made by the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its reports on the two ad hoc visits of January 2004 and May 2005;
- 23.2. authorise the publication of the above mentioned reports without further delay;
- 23.3. take the necessary measures to execute the European Court of Human Rights' judgment in the case *Mammadov (Jalaloglu) v. Azerbaijan*, finding a violation of the Convention's Articles 3 (prohibition of torture) and 13 (right to an effective remedy).
24. As regards other outstanding issues:
- 24.1. the law on alternative civilian service should be adopted without further delay, in line with Azerbaijan's accession commitment;
- 24.2. the law on national minorities should be adopted and the European Charter for Regional or Minority Languages (ETS No. 148) should be ratified, in line with Azerbaijan's accession commitment;
25. As regards Azerbaijan's commitment to the peaceful settlement of the Nagorno-Karabakh conflict:
- 25.1. the Assembly considers that sustainable democratic development will be extremely difficult in Azerbaijan as long as the country's territorial integrity has not been restored;
- 25.2. the Assembly takes note of the United Nations General Assembly Resolution "on the situation in the occupied territories of Azerbaijan", adopted on 14 March 2008, which expresses serious concern that the armed conflict in and around the Nagorno-Karabakh region of Azerbaijan continues to endanger international peace and security, reaffirms Azerbaijan's territorial integrity, expresses support for its internationally recognised borders and demands the immediate withdrawal of Armenian forces from the occupied territories;
- 25.3. the Assembly welcomes the meeting between the Azerbaijani and Armenian Foreign Ministers in Strasbourg, on 6 May 2008, on the sidelines of the meeting of the Committee of Ministers, which they both subsequently qualified as constructive talks. Both Ministers reaffirmed their countries' commitment to seeking a peaceful solution to the Nagorno-Karabakh conflict. The Assembly strongly urges Azerbaijan and Armenia to continue to seek a peaceful solution to the conflict in compliance with the standards and principles of international law;
- 25.4. the Assembly welcomes the Monitoring Committee's initiative to organise in Berlin, in November 2007, a hearing "on frozen conflicts" including the Nagorno-Karabakh conflict. In this respect, the Assembly reaffirms the role it can play in helping foster a positive negotiating climate, through dialogue at the parliamentary level.
26. The Assembly asks its Monitoring Committee to continue to follow closely developments in Azerbaijan, especially with a view to ensuring that the next presidential election of October 2008 will fully respect Council of Europe standards for free and fair elections.

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<sup>1</sup> *Assembly debate* on 24 June 2008 (21<sup>st</sup> Sitting) (see [Doc. 11627](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Herkel and Mrs Jivkova). *Text adopted by the Assembly* on 24 June 2008 (21<sup>st</sup> Sitting).