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Honouring of obligations and commitments by Azerbaijan

Report

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

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Summary

The report recognises the efforts made by Azerbaijan in a number of areas, such as: the on-going co-operation with the Venice Commission on the revision of the Election Code and of the Law on Freedom of Assembly, the establishment of a Justice Academy, the increase of the number of judges and the organisation of examinations for the recruitment of new judges with Council of Europe assistance; the recent pardoning by presidential decree of 11 prisoners appearing on the lists of NGOs members of the Task Force entrusted to follow-up the implementation of Resolution 1457 (2005) on political prisoners in Azerbaijan; the recently adopted National Action Plan for the Protection of Human Rights, as well as the constructive attitude of the President of Azerbaijan towards the search of a solution to the Nagorno-Karabakh conflict.

At the same time, the report highlights areas of concern and is insistent on the need to establish a dialogue between the ruling majority and the opposition both inside and outside the parliament; to further reinforce the role of parliament *vis-à-vis* the executive and to improve the balance of powers; to increase the number and the quality of defence lawyers; to further encourage the work of the Task Force and ensure that it produces concrete results; to improve the general environment for the independent media in the country, which has regrettably deteriorated during the last months, and to find a definitive solution to the licence issue of the independent TV channel ANS without further delay; to put an end to torture and ill-treatment by law enforcement agents and within the army and to implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

The Monitoring Committee attaches particular importance to the forthcoming presidential elections in 2008 which must be the first in the history of the country to comply fully with international standards for free and fair elections. The report recommends to the Assembly to pursue its monitoring on the honouring of obligations and commitments by Azerbaijan.

A. Draft resolution

1. Azerbaijan joined the Council of Europe on 25 January 2001 and, since its accession, has been subject to a Parliamentary Assembly monitoring procedure, which has led to the adoption of Resolutions 1305 (2002), 1358 (2004), 1398 (2004) and 1456 (2005).

2. Furthermore, in Resolution 1505 (2006) on the implementation of Resolution 1480 (2006) on the challenge of credentials of the parliamentary delegation of Azerbaijan, adopted in June 2006, the Assembly instructed its Monitoring Committee to follow closely the developments in the country and report back to it, at its spring 2007 part-session, on progress in the honouring of obligations and commitments by Azerbaijan, including those related to the electoral reform.

3. The aftermath of the November 2005 elections was marked by a further weakening of the opposition both inside and outside parliament and limited interest by the public in the political life of the country. Despite Assembly calls to the contrary, a number of opposition members have refused to take their seats in parliament or boycotted the May 2006 partial re-run elections. Subsequent splits within the opposition have further weakened its position. There is an urgent need for dialogue to be established between the ruling majority and the opposition both inside and outside parliament if the political climate in the country is to be improved.

4. Situated at the crossroads between Europe and Asia and with a booming economy, Azerbaijan is becoming a major strategic actor in the region. Holding the world's record in economic growth, Azerbaijan has, however, 25% of its population still living in poverty. An ever-increasing corruption risks jeopardising its economic development.

5. In the field of European integration, an action plan was signed on 14 November 2006 with the European Union, in the framework of the European Neighbourhood Policy. The Assembly welcomes the fact that the action plan refers to the country's international commitments, including towards the Council of Europe, in the fields of democracy, the rule of law and human rights.

6. With regard to Azerbaijan's obligations and commitments in the field of democracy:

6.1. the Assembly notes that, since accession to the Council of Europe, the Parliament of Azerbaijan has reinforced its role as a forum for political debate and an instrument for pushing forward democratic reforms. However, much remains to be done to strengthen parliamentary control over the executive and improve the checks and balances in a state governed by a strong presidential system. Therefore, the Assembly invites the authorities of Azerbaijan to consider in due course the possibility of a constitutional revision to improve the balance of powers and strengthen the role of the parliament, with the assistance of the Council of Europe's Venice Commission;

6.2. the Assembly would also like to see the work of parliamentary committees being further developed. Important matters, such as those related to the honouring of commitments undertaken upon accession to the Council of Europe, should be regulated by laws elaborated and discussed within the parliament and its committees rather than by presidential decrees;

6.3. the Assembly notes that, at present, political groups must have at least 20% of the voting strength to form parliamentary factions. It therefore invites the Parliament of Azerbaijan to consider lowering significantly this percentage through a revision of its Internal Rules, if need be with Council of Europe assistance or in the framework of the Assembly's interparliamentary co-operation programme;

6.4. noting that, since the country's accession to the Council of Europe, not a single election held in Azerbaijan has been deemed fully free and fair, the Assembly attaches particular importance to the forthcoming presidential elections in 2008;

6.5. the Assembly welcomes the on-going co-operation with the Venice Commission on the revision of the Election Code. It reiterates that, for the next presidential elections to comply fully with European standards, it is essential that, beyond technical improvements, the Election Code be amended in order to provide for: an election administration which enjoys the confidence of the electorate and of all the stakeholders; a better procedure for the efficient handling of election-related

complaints and appeals. The composition of the Central Electoral Commission should also be completed without further delay;

6.6. noting that, following the November 2005 elections, few criminal proceedings were instituted for electoral violations which resulted in the imprisonment of only one single person and the dismissal of others, the Assembly warns that more resolute action is needed to discourage future violations. It urges the Azerbaijani authorities to pass on a clear message at the highest political level that electoral fraud will not be tolerated in the next presidential elections.

6.7. with regard to local self-government, the Assembly:

6.7.1. welcomes the recent establishment in Azerbaijan of three municipal associations (for cities, rural towns and settlements) and encourages them to work jointly;

6.7.2. urges the Azerbaijani authorities to implement the recommendations made by the Congress of Local and Regional Authorities of the Council of Europe in order to bring the relevant legislation and its implementation in line with the Constitution and the European Charter of Local Self-Government. In particular, the authorities should take all necessary measures to grant municipalities a substantial share of public responsibilities, ensure that sufficient means are provided for their implementation and, with respect to the city of Baku and other large cities, set up a city council directly elected by the citizens to run local public administration acting at overall city level.

7. With regard to Azerbaijan's obligations and commitments in the field of the rule of law:

7.1. the Assembly has repeatedly insisted on the need to reform and train the Azerbaijani judiciary, effectively eradicate corruption among judges and improve its present negative image. It therefore welcomes the efforts undertaken by the authorities to achieve this goal, in co-operation with the Council of Europe, and calls for the effective implementation of adopted measures;

7.2. the Assembly notes in particular that presidential decrees issued in 2006 provide for an increase of the appeal courts and of the number of judges throughout the country as well as for the establishment of a Justice Academy in charge of training professionals from the justice field. The Assembly considers that this new institution should be placed under the authority of the Judicial Legal Council in order to guarantee its independence from the executive. The Assembly also notes with satisfaction that exams to recruit new judges have been organised on the basis of a fair and transparent selection procedure elaborated in co-operation with the Council of Europe;

7.3. the Assembly is concerned by the low number of defence lawyers practising currently in the country and especially in the regions. It notes that the establishment of a strong defence bar is critical in preventing human rights abuses and protecting the rights of criminal defendants;

7.4. while welcoming the recently organised bar examinations, the Assembly urges the competent authorities to reform the system of selection of defence lawyers, ensure that their number and quality of their services is increased and take appropriate measures to encourage young lawyers to join the defence bar. The Council of Europe could offer assistance and in particular training;

7.5. the Assembly underlines that the creation of an independent and well trained judiciary and criminal defence bar will ultimately put an end to allegations that persons are convicted in proceedings which do not respect the fundamental guarantees of a fair trial and thus allegations of politically motivated prosecutions, as well as allegations regarding ill-treatment during police custody and pre-trial detention;

7.6. in its Resolution 1457 (2005) on the implementation of Resolution 1359 (2004) on political prisoners in Azerbaijan, adopted in June 2005, the Assembly:

7.6.1. concluded that "it [could] not consider the issue of political prisoners to have been finally resolved" and asked the Azerbaijani authorities to take a number of measures in order to find "a speedy and permanent solution to the issue of political prisoners and presumed political prisoners";

7.6.2. welcomed the setting up of a Task Force comprising representatives of the authorities and of human rights NGOs for the purpose of "adopting a single position" on the issue; the representatives of the authorities have in particular committed themselves to "make use of every legal remedy (amnesty, review of cases by higher-instance courts, conditional release, release for health reasons, pardon) to settle this problem" and agreed to work on the basis of two lists referred to in Resolution 1457 (2005);

7.7. the Assembly notes that the Task Force on which much hope had been placed in June 2005 has remained inactive for more than a year and met only on the occasion of rapporteurs' visits. Moreover:

7.7.1. no concrete action has been taken as to the proposal of passing an amnesty law by the parliament;

7.7.2. on 11 appeals to the Supreme Court by persons mentioned on the lists of the Task Force and sentenced prior to the ratification of the European Convention of Human Rights, eight were declared inadmissible on procedural grounds; since no review on the merits of their case took place, this prevents them from successfully lodging an application with the European Court of Human Rights;

7.7.3. legislation on conditional release was not applied in all cases concerned;

7.7.4. the presidential pardon decree of October 2006 led to the release of two journalists, but covered only two persons mentioned on the lists of the Task Force;

7.8. welcoming the fact that since November 2006 the work of the Task Force has been reactivated and three meetings have been held in the last five months, the Assembly urges it now to produce concrete results and prove its efficiency;

7.9. the Assembly welcomes in this respect as an important step forward the presidential decree of 19 March 2007 which led to the pardoning of 11 persons appearing on the lists of NGOs members of the Task Force. As a result, ten persons were released and one person's sentence was reduced from life to 25 years' imprisonment. Furthermore, the suspended sentence inflicted on Mr Said Nuri, one of the leaders of the *Yeni Fikir* Youth Movement, was cancelled. The Assembly hopes that this decree will encourage the Task Force to continue its work and produce further results. As a priority, the Task Force should now:

7.9.1. up-date the June 2005 lists indicating how many cases have since been resolved and how the remaining cases will be solved;

7.9.2. establish which cases still require consideration, including on humanitarian grounds;

7.9.3. review the cases of still imprisoned relatives, employees or acquaintances of persons who have meanwhile been pardoned or released;

7.9.4. consider the proposals to extend its mandate to cover trial monitoring and to include representatives of the judiciary among its members.

7.10. the Assembly draws particular attention to the cases of: Mr Natiq Efendiyev, who had been considered as a political prisoner by the independent experts of the Secretary General, released subsequently by a presidential pardon decree in March 2005 and re-arrested a few weeks prior to the parliamentary elections, on 15 October 2005; Mr Rasim Alekperov, an old man considered a national hero, who suffers from serious health problems.

7.11. with regard to the prison sentences inflicted on the other two leaders of the *Yeni Fikir* Youth Movement, Mr Ruslan Bashirli and Mr Ramin Tagiyev, the Assembly hopes that the Supreme Court will fully examine the reported violations of fair trial in the procedure before the lower courts as well as the allegations of ill-treatment during police custody made by Mr Bashirli;

7.12. the Assembly expects the trial of the former Minister of Economic Development, Mr Farhad Aliyev, who has been kept in pre-trial detention since October 2005, to start without further delay; it hopes that the trial court will duly examine allegations of any procedural violations which might have occurred during the pre-trial investigation; Mr Farhad Aliyev should also be allowed to receive treatment by doctors of his choice with respect to his heart problems;

7.13. the Assembly reiterates that the Criminal Code of Azerbaijan should be amended in line with recommendations made by Council of Europe experts in December 2005 as regards in particular its compatibility with the European Convention of Human Rights and the case-law of the European Court of Human Rights, as well as with Council of Europe standards in the criminal field;

7.14. as regards the fight against corruption, despite commendable efforts made by the authorities and Council of Europe assistance, corruption remains a major problem in Azerbaijan affecting all levels of society and threatening the economic, social and political development of the country. The Assembly urges the Azerbaijani authorities to implement the recommendations made by the Group of States against Corruption (GRECO), improve accordingly domestic legislation and effectively implement adopted measures.

8. With regard to Azerbaijan's commitments and obligations in the field of human rights:

8.1. with regard to the freedom of expression and of the media, the Assembly recalls the great concerns it expressed in its Resolution 1505 (2006), adopted in June 2006, about violent incidents directed against journalists. Regrettably, instead of improving, the general environment for the independent media in Azerbaijan has since deteriorated:

8.1.1. despite the President's political moratorium on defamation, launched in March 2005, the number of civil and criminal defamation proceedings brought against opposition journalists and newspapers by public officials has recently increased, leading to intimidation and self-censorship;

8.1.2. Mr Nijat Huseynov, correspondent for the *Azadliq* newspaper, was attacked on 25 December 2006 in broad daylight; Mr Einullah Fatullayev, editor-in-chief of *Realni Azerbaijan*, which started to come out again in December 2006 after a two-month closure, has recently received death threats;

8.1.3. the well-known poet and satirical journalist Sakit Zahidov was convicted to a three-year prison sentence in October 2006, which has been denounced as being politically motivated and based on no credible evidence by local and international human rights organizations;

8.1.4. on 24 November 2006, the *Azadliq* newspaper, the most vocal opposition newspaper, was evicted from the premises it occupied in the centre of Baku since 1992 free of charge following a court decision which found the agreement with the then Mayor of Baku to be illegal: special forces executed the eviction within an hour;

8.1.5. on the same day (24 November 2006) the most watched independent TV channel in Azerbaijan, ANS, was silenced following a decision taken by the National Television and Radio Council (NTRC) not to extend its licence on the basis of violations of the law on radio and television broadcasting; the channel was allowed to start re-broadcasting three weeks later pending the decision on the winner of a new tender;

8.2. while welcoming the release of two journalists in October 2006 by a presidential decree, the Assembly urges the Azerbaijani authorities to consider a legal reform aiming at the decriminalisation of defamation; relevant civil law provisions should also be revised to ensure respect of the principle of proportionality; the Assembly encourages Council of Europe assistance in this field as well as efforts undertaken by the OSCE, which have led to the elaboration of a draft law on defamation; it also encourages efforts aiming at improving the professional standards and ethics of journalists in Azerbaijan and notes that Council of Europe assistance could be sought for this purpose;

8.3. the Assembly urges the Azerbaijani authorities to properly investigate attacks and threats against journalists; the perpetrators should be found, tried and punished;

8.4. the Assembly notes that the *Azadliq* newspaper is now functioning in the *Azerbaijan Publishing House*, also situated in the centre of Baku, and hopes that the new premises allow the paper to operate normally;

8.5. seriously concerned that the issue of licence for the ANS TV and Radio has not yet been finally resolved, the Assembly urges that a definitive solution be found without further delay; it welcomes the fact that the law on radio and television broadcasting has now been sent to the Council of Europe for an expert review, so as to avoid similar situations in the future;

8.6. violations of the freedom of assembly in Azerbaijan have been repeatedly and strongly denounced by the Assembly, especially prior to or after elections, most recently after the parliamentary elections of November 2005;

8.7. the Assembly notes that two demonstrations were recently staged by the opposition and no incidents were reported; it welcomes the fact that the authorities of Azerbaijan have shown the political will to amend the 1998 law on freedom of assembly and have requested the assistance of the Venice Commission; it urges them to amend now the law in line with the recommendations made by the latter and take appropriate measures to ensure that the implementation of the relevant legislation respects the guarantees of Article 11 of the European Convention of Human Rights as interpreted by the European Court of Human Rights; violations of the freedom of assembly and excessive use of force by law enforcement agents should be stopped; on-going training efforts in this respect are most welcomed;

8.8. prison conditions in Azerbaijan remain harsh despite continuing infrastructure improvements; the situation in the Gobustan prison gives rise to particular concerns in view of the number of deaths and suicides committed by inmates;

8.9. the Assembly urges the authorities to ensure a case-by-case review of life sentences which were the result of the abolition of the death penalty and allow the persons concerned to benefit from the retroactive application of the most favourable criminal law provisions adopted in 2000;

8.10. the Assembly welcomes an ambitious programme of prison reform currently on-going with Council of Europe and European Commission assistance; it also welcomes the fact that access to prisons has been granted to the Ombudsperson, local and international NGOs and human rights defenders;

8.11. however, persistent allegations of torture or ill-treatment, carried out mostly by law enforcement agents during police custody or pre-trial investigation, as well as within the army, harm the image of the country especially as long as they are not properly investigated and sanctioned; these problems have recently been highlighted in the judgment of 11 January 2007 of the European Court of Human Rights in the case of *Mammadov (Jalaloglu) v. Azerbaijan*;

8.12. the Assembly urges the Azerbaijani authorities to act energetically to prove that they do not tolerate torture or ill-treatment within public institutions and their own army and thus put an end to the high perception of impunity; on-going training for police officers and prison staff, with Council of Europe assistance, should be further encouraged;

8.13. the Assembly urges the Azerbaijani authorities to implement the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) and authorise the publication of the CPT reports on its 2004 and 2005 visits to the country;

8.14. the Assembly welcomes the fact that work on a draft law on alternative civil service to replace military service has finally started with Council of Europe expert assistance; it urges the authorities of Azerbaijan to take into account the recommendations of the experts and adopt the law without further delay in line with their accession commitment;

8.15. Azerbaijan is home to many national minorities living peacefully together for centuries. The Advisory Committee on the Framework Convention of National Minorities has commended

Azerbaijan's efforts to open up the personal scope of application of the convention to a wide range of minorities, while enumerating a number of shortcomings in the relevant legislation;

8.16. the Assembly urges the authorities to implement the recommendations made by the Advisory Committee and in particular to adopt a law on national minorities in line with their accession commitment; it also urges them to ratify the European Charter for Regional or Minority Languages as soon as possible, noting Azerbaijan's commitment to do so within one year of its accession to the Council of Europe;

8.17. the Assembly urges the Azerbaijani authorities to implement:

8.17.1. Assembly Resolution 1497 (2006) on refugees and displaced persons in Armenia, Azerbaijan and Georgia, adopted in April 2006;

8.17.2. Resolution 1544 (2007) on the situation of women in the South Caucasus, adopted by the Standing Committee on behalf of the Assembly in March 2007, as regards in particular: the participation of women in public and political life, discrimination in employment, women's health and violence against women, in particular domestic violence, human trafficking, the situation of refugee and displaced women as well as female prisoners.

8.18. the Assembly welcomes the National Action Plan on the protection of human rights in the Republic of Azerbaijan, adopted on 28 December 2006 by a presidential decree; all sectors of public authorities, but also local NGOs, are expected to contribute to the implementation of the Action Plan;

9. With regard to the Nagorno-Karabakh conflict:

9.1. the Assembly refers to its Resolution 1416 (2005) whereby it held that considerable parts of the territory of Azerbaijan were still occupied by Armenian forces and regrets that, despite the continuation of high level dialogue between Azerbaijan and Armenia, this conflict, which is at the origin of more than four thousand missing persons and some 760 000 displaced persons from the Azerbaijani side, remains unresolved;

9.2. the Assembly recalls the concern it expressed in its Resolution 1416 (2005) that the military action, and the widespread ethnic hostilities, which preceded it, led to large-scale ethnic expulsion and the creation of mono-ethnic areas, which resemble the terrible concept of ethnic cleansing. It therefore urges the parties to enhance their efforts to build peace and harmony between the two communities of the Nagorno-Karabakh region of the Republic of Azerbaijan;

9.3. reiterating that it is in the interest of both sides to end this conflict as soon as possible, ruling out the use of force, in line with their accession commitment, the Assembly urges them, despite domestic political agendas, to maintain the momentum developed in the negotiations at the end of last year and refrain from unjustified delays, prolongations or intentional setbacks from the achieved understandings;

9.4. the Assembly invites the Azerbaijani authorities to prepare the population to accept the measures currently being negotiated. In this context it welcomes and further encourages contacts which have recently been established between Azerbaijani and Armenian civil society groups;

9.5. the Assembly expects that the Ad Hoc Committee of the Bureau on the implementation of Resolution 1416 (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference will soon be able to visit the two countries, including the Nagorno-Karabakh region, to help foster a positive negotiating climate, while refraining from interfering in the negotiation process.

10. The Assembly resolves to pursue its monitoring on the honouring of obligations and commitments by Azerbaijan. It attaches particular importance to the forthcoming presidential elections in 2008 which must be the first in the history of the country to comply fully with international standards for free and fair elections.

B. Explanatory memorandum by MM. Herkel and Lloyd, Co-Rapporteurs

Contents

1. Introduction

- 1.1. The monitoring procedure
- 1.2. The political, economic and international context

2. Signature and ratification of Council of Europe conventions

3. Honouring of obligations and commitments

- 3.1. Pluralist democracy
 - 3.1.1. *Separation of powers*
 - 3.1.2. *Electoral reform*
 - 3.1.3. *Local self-government reform*
- 3.2. The rule of law
 - 3.2.1. *Reform of the judicial system and the Bar Association*
 - 3.2.2. *Combating corruption and organised crime*
 - 3.2.3. *Follow-up to the issue of alleged political prisoners and humanitarian concerns*
- 3.3. Human rights
 - 3.3.1. *National Action Plan on Human Rights*
 - 3.3.2. *Media pluralism and freedom of expression*
 - 3.3.3. *Freedom of assembly*
 - 3.3.4. *Prison reform, detention conditions and allegations of ill-treatment*
 - 3.3.5. *Alternative service and conscientious objectors*
 - 3.3.6. *Minorities*

4. The Nagorno-Karabakh conflict

1. Introduction

1.1. The monitoring procedure

1. When Azerbaijan joined the Council of Europe, on 25 January 2001, it agreed not only to honour the obligations incumbent on all member states under Article 3 of the Organisation's Statute but also a number of specific commitments, set out in Opinion No. 222 (2000) on Azerbaijan's application for membership of the Council of Europe.

2. Pursuant to Resolution 1115 (1997) and in accordance with paragraph 17 of Opinion No. 222, the monitoring procedure was initiated immediately upon Azerbaijan's accession¹.

3. The Monitoring Committee has since presented numerous reports to the Parliamentary Assembly on progress made by Azerbaijan in honouring its obligations and commitments and in particular on the functioning of its democratic institutions. They resulted in the adoption by the Assembly of Resolutions: 1305 (2002), 1358 (2004), 1398 (2004) and 1456 (2005). Also, several reports were presented to the Assembly by the Committee of Legal Affairs and Human Rights on the honouring of a specific commitment, namely that of releasing or re-trying alleged political prisoners². The developments regarding the Nagorno-Karabakh conflict have been followed-up by the Political Affairs Committee³ and an Ad Hoc Committee of the Bureau. The situation of refugees and displaced persons in Armenia, Azerbaijan and Georgia is described in Doc. 10835 which led to the adoption of Resolution 1497 (2006) in April 2006. The situation of women in the South Caucasus, including Azerbaijan, is described in Doc. 11178 which was debated in the Standing Committee in March 2007 and led to the adoption of Resolution 1544 (2007) and Recommendation 1790 (2007).

4. Since its accession to the Council of Europe in 2001, all ballots held in Azerbaijan failed to meet a number of democratic standards. This failure was also observed during the last parliamentary elections of November 2005 and led to the challenging of the credentials of the Azerbaijani delegation at the opening of the Assembly's January 2006 part-session.

5. In its Resolution 1480 (2006), adopted in January 2006, the Assembly finally ratified the credentials of the delegation of Azerbaijan and decided to examine in June 2006 whether to reconsider them on the basis of the progress that would have been made in five areas, enumerated in paragraph 9 of Resolution 1480, and the conduct of the partial re-run parliamentary elections of May 2006. An Ad Hoc Committee of the Bureau of the Assembly observed the May re-run elections and a Rapporteurs' visit to the country was organised two weeks later to the country, from 25 to 28 May 2006, in order to verify the situation in the aftermath of the elections⁴.

6. Having examined the developments since January 2006, the Assembly considered in its Resolution 1505 (2006), adopted in June 2006, that, although progress was observed in the conduct of the voting on 13 May 2006, most of the requirements mentioned in Resolution 1480 had not been met.

7. Considering that co-operation between the Council of Europe and Azerbaijan remained essential for the development of democracy and the respect for the rule of law and human rights in Azerbaijan, and that such co-operation should continue for the purpose of preparing the 2008 presidential elections, the Assembly decided not to reconsider at that stage the credentials of the Azerbaijani delegation. The Assembly instructed the Monitoring Committee to continue to follow closely the developments in the country and to report back to the Assembly at its spring 2007 part-

¹ The honouring by Azerbaijan of its obligations and commitments is also monitored by the Committee of Ministers of the Council of Europe via its Monitoring Group (GT-SUIVI.AGO). The latter presented its 7th Progress Report in July 2006; see Doc. CM (2006) 100 final, declassified at the 971st Ministers' Deputies meeting (12 July 2006); see also the Deputies' decisions in CM/Del/Dec (2006) 971/2.3.

² See Resolution 1272 (2002), Resolution 1359 (2004), Resolution 1398 (2004) and Resolution 1457 (2005).

³ See Resolution 1416 (2005) and Recommendation 1690 (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, adopted by the Assembly in January 2005. See also Resolution 1525 (2006) on the establishment of a Stability Pact for the South Caucasus, adopted by the Standing Committee in November 2006.

⁴ See doc. AS/Mon (2006) 20, confidential.

session on progress in the honouring of obligations and commitments by Azerbaijan, including those related to the electoral reform.

8. It is against this background that we visited Azerbaijan from 30 October to 2 November 2006. We wish to thank the Azerbaijani Parliament and in particular the Chairman of the Azerbaijani delegation to the Assembly, Mr Samad Seyidov, and its secretariat, for their excellent organisation of our visit, which enabled us to hold very frank exchanges of views including at the highest level. We were particularly happy to be able, for the first time, to meet young students of the University of Languages and discuss with them issues of concern. Our visit included also a trip to the region of Quba in the north of the country. This allowed us to meet a number of representatives of national minorities and become acquainted with the multicultural diversity of the country. We are grateful to the Governor for his hospitality and the efficient organisation of the programme in the region.

9. Our special thanks also go to Mr Denis Bribosia, Special Representative of the Secretary General of the Council of Europe in Azerbaijan, for his active assistance in organising a wide range of meetings with civil society, political parties, and representatives of the media and of international organisations. He also hosted in our presence a meeting of the "Task Force between human rights protection organisations and the state authorities".

10. Last but not least, we wish to thank Mr Vasiliy Istratov, Ambassador of the Russian Federation to Azerbaijan, for organising a very fruitful briefing with Ambassadors of Council of Europe member states at the very beginning of our mission.

11. The wide spectrum of meetings we held in Azerbaijan allowed us to gather a wealth of information with respect to the state of play with regard to the country's commitments and obligations towards the Council of Europe. We insisted on the need for a permanent dialogue with our Azerbaijani colleagues based on mutual trust and respect, especially since for one of us (Tony Lloyd) this was the first monitoring mission to Azerbaijan. We have since been in regular contact with the Chairman of the delegation, Mr Seyidov, and received information on latest developments, in particular as regards the situation of the media (see also below).

12. We took stock of the main findings of our mission and developments which have occurred since in a preliminary draft report which the committee approved on 13 December 2006 and transmitted to the Azerbaijani parliamentary delegation for comments and clarifications within three months (doc. AS/Mon (2006) 36).

13. We are grateful to the delegation and in particular to its Chairman, Mr Seyidov, for having sent us their comments on 27 February 2007⁵, i.e. before the three-month maximum deadline, thus enabling us to revise our report and present it to the Monitoring Committee in time for adoption at its meeting of 28 March with a view to an Assembly debate during the April 2007 part-session.

1.2. The political, economic and international context

14. The Assembly has been following closely political developments in Azerbaijan since the November 2005 parliamentary elections. The aftermath of the elections was marked by a further weakening of the opposition both inside and outside Parliament and limited interest by the public in the political life of the country at a moment when economic development is impressive. After a tense and long electoral campaign in 2005, people seem to have tired of political confrontation and to have lost their interest in the political process. This may explain the low visibility of the electoral campaign for the May 2006 re-run elections and the low turnout and lack of public interest in the re-run local elections of October 2006. At the same time, an increased number of businessmen entered the Parliament in a desire to combine economic and political power. The next presidential elections due in 2008 do not generate any political debate since there seems to be no candidate, at least at this stage, prepared to challenge incumbent President Ilham Aliyev.

15. Despite Assembly calls to the contrary, most of the members belonging to the main opposition Azadliq block who were elected in the November 2005 elections refused to take their seats in Parliament and boycotted the partial re-run elections of May 2006 claiming they no longer believed

⁵ See doc. AS/Mon (2007) 07.

in the electoral process. This was for instance the case of Mrs Lala Shovket, leader of the opposition Liberal Party. Mr Ali Kerimli, the leader of the opposition Popular Front Party, did not participate in the May partial re-run elections after his initial election in November 2005 was invalidated⁶.

16. The decision of MPs from the Musavat party, which also belonged to the Azadliq group, to take up their seats and participate in the May re-run elections led to a split within the main opposition bloc and the departure of Musavat from it. Moreover, Musavat lost its gamble as none of its candidates was elected in the May re-run.

17. A further split within the opposition occurred recently: following internal disputes, the Democratic Party of Azerbaijan (ADP) decided in February to dismiss its leader, Mr Rasul Guliyev. According to the First Deputy Chairman of the ADP, Mr Sardar Jalaloglu, the party dismissed Mr Guliyev for abuse of power, causing separation and disagreement within the party and disrespect of the party rules. Mr Rasul Guliyev, who is under arrest warrant in Azerbaijan, is living in exile in New York⁷. Following this decision, the Azadliq bloc announced in early March the suspension of its co-operation with the ADP. On 12 March, the ADP decided to quit the Azadliq bloc.

18. The composition of the Parliament following the May 2006 re-run elections is not much different than in the past: out of a total of 125, the ruling YAP party has 62 seats, the independents 44 and Musavat – considered to be the only genuine opposition party currently present in Parliament – is represented with only 5 MPs. The remaining 14 seats are divided between very small opposition parties who each have one, two or three seats. There is therefore hardly any realistic opportunity for the opposition to play a significant role in Parliament. As for the opposition which has stayed outside the Parliament, they feel that there is no space left for them to continue to exist and play a meaningful role in the political life of the country.

19. The eviction of the Popular Front Party from the premises it occupied in the centre of Baku on 24 November 2006, at the same time as the eviction of the main opposition newspaper – Azadliq – from the same building (together with other media outlets) added to the opposition's feeling of "being under attack" – and this despite any legal or technical arguments which may explain the measures taken. The silencing on the very same day of the most-watched independent TV channel in the country – ANS – apart from the concerns it raised from the point of view of the freedom of the media, also affected the general political context in the country harming its international image as a European democratic state respectful of the rule of law and of human rights⁸. This may be witnessed in the reactions of human rights activists and the international community to these events. Although we understand the authorities' insistence, including at the highest level, that these events should not be politicised but dealt with in the framework of the law, the cumulative impact is bound to be perceived as political.

20. In a positive development, which occurred one day before we issued our preliminary draft report, ANS was allowed to start re-broadcasting as of 12 December 2006, pending a decision on the winner of a new tender, which was expected to be taken at the beginning of February 2007. We welcomed this development, which was announced as the result of the President's goodwill and numerous appeals from the society and human rights activists, but still await a definitive solution of the ANS license issue⁹.

⁶ For reasons we have not understood Mr Kerimli has been refused a passport and cannot travel abroad. Upon our request for clarifications on this issue, the Azerbaijani authorities informed us that the Ministry of the Interior has never officially refused to issue a passport to Mr Ali Kerimli. The court of first instance that examined Mr Kerimli's case dismissed his application on the ground that he had not provided to the court sufficient evidence in support of the allegedly illegal behaviour of the Ministry of Interior. We still fail to understand why Mr Kerimli has no passport and reiterate our request that he should soon be able to receive one, especially if the Ministry of the Interior has not refused to grant him one.

⁷ Mr Rasul Guliyev caused considerable unrest, arrests of his supporters and trials in Baku before the legislative elections in 2005 by attempting - unsuccessfully - to land at Baku airport in order to participate in the elections.

⁸ See below section 3.3.2. for more details regarding the action taken and the explanations given by the authorities as well as other concerns related to the freedom of expression and of the media.

⁹ See below, section 3.3.2.

21. In the field of European integration, on 14 November 2006, the European Union (EU) and Azerbaijan adopted an Action Plan under the European Neighbourhood Policy (ENP)¹⁰. The aim of the ENP is to strengthen relations with and promote the gradual integration of the three South Caucasus countries, notably by affording them access to the EU's internal market. Negotiations with each of the countries concerning the action plans began at the end of 2005. Each plan is adapted to the partner country's specific needs.

22. The Action Plan represents a wide-ranging economic and political co-operation instrument, enabling progress towards achievement of the commitments and objectives laid down in the partnership and co-operation agreement. The European Union expects in particular further work to strengthen democratic structures, the rule of law, including reform of the judiciary and the fight against fraud and corruption, as well as respect for human rights and fundamental freedoms, in compliance with the country's international commitments (Council of Europe, OSCE, and UN). The conduct of fair and transparent electoral processes, in line with international requirements, as well as the fight against organised crime, trafficking in human beings, smuggling of illegal migrants and money-laundering are set among the priority policies to be pursued¹¹.

23. It is expected that the ENP Actions Plans will boost regional co-operation in the South Caucasus and defuse different disputes in the region. Thus, one of the major priority policy areas for both Azerbaijan and Armenia is the requirement to contribute to a peaceful solution of the Nagorno-Karabakh conflict and enhance efforts in the field of regional co-operation.

24. President Ilham Aliyev has told us clearly that his own and his government's option for Europe was unequivocal. As far as the Council of Europe in particular was concerned, he reaffirmed that without the values of the Organisation, namely respect for democracy, rule of law and human rights, there could be no political development in the country; and without political reforms, public control and increased transparency, economic success would also be jeopardised.

25. At the same time, Azerbaijan, situated at the crossroads between Europe and Asia and neighbouring Iran is clearly becoming a major strategic partner in the region, in particular for the United States where President Ilham Aliyev was received by President Bush last spring. Azerbaijan has also close relations with Georgia which it provides with gas. As for Russia, her interest in Azerbaijan has increased after the recent tensions with Georgia. Russia also needs stability in Azerbaijan as a guarantee *vis-à-vis* the North Caucasus. Regrettably, we heard numerous allegations that xenophobic attitudes have recently been growing in Russia against Azerbaijanis living there.

26. Azerbaijan is a founding member of GUAM, together with Georgia, Ukraine and Moldova. On 23 May 2006 in Kiev, the member States of GUAM decided to transform this rather loose organisation into a new regional organisation for democracy and economic development. Three key documents were adopted: the first one is the Kiev declaration establishing the new organisation, the second defines the regulations of the new entity and the third was a statement on principles of conflict settlement, unequivocally stating support for an end to separatist tendencies in their territories. Another 20 wide-ranging documents were also adopted related in particular to the establishment of free trade zones.

27. Welcome developments occurred in November 2006 with respect to the resolution of the Nagorno-Karabakh conflict, which remains the top priority of Azerbaijan's foreign policy as well as a major humanitarian issue involving some 760 000 displaced persons and more than four thousand missing persons. Following the last meeting of the two Presidents in Minsk on 28 November 2006, it seems that the two sides have now come closer to an agreement on the basic principles for the resolution of the conflict¹².

28. Against this political and international background, the economic situation in Azerbaijan is booming: Azerbaijan holds the world's record in economic growth. It was 26% in 2005 and 34% during

¹⁰ The same day similar action plans were signed between the European Union and the two other South Caucasus countries, Armenia and Georgia.

¹¹ The European Commission will work closely with other organisations such as the Council of Europe, the OSCE, relevant UN bodies, and International Financial Institutions to monitor the implementation of the objectives set out in the Plans. A first review of the implementation will be undertaken within two years.

¹² See the OSCE Ministerial Statement dated 5 December 2006 and also section 4 below.

the first nine months of 2006. Oil started flowing last year towards western markets through the BTC (Baku-Tbilisi-Ceyhan) pipeline thus avoiding Armenia, Russia and Iran. On 7 February 2007, an agreement on Baku-Tbilisi-Kars railway was signed in the city of Tbilisi. There is also talk about possible link-ups of Kazakh oilfields and Turkmen gas fields to this new infrastructure. We have seen major public works (flyovers, highways etc.) being carried out in the capital.

29. Inflation is however high¹³ and the price of flats in Baku and its outskirts has reportedly doubled last year. There is also a major discrepancy in development between the capital (3.5 million people out of a total of officially 8.5 million inhabitants) and the regions. 25% of the population still lives in poverty. Corruption has increased with economic growth and risks jeopardising this very growth and threatens the social and political development of the country¹⁴.

30. At the beginning of January 2007, the government decided to raise the price of public commodities and services in order to bring energy prices closer to those of the world market: the price of electricity was tripled, the price of water doubled and the price of petrol increased by approximately 50%. Such a drastic increase in a country where the minimum monthly salary amounts to only 35 Euros was heavily contested by opposition leaders and critics. Following protests¹⁵, Presidential decrees increased the salaries of employees of social security organisations, education, health care, culture, sport, science and scientific research institutions by 25% as of 1 February 2007.

31. Another worrying factor is the increase in applications by asylum seekers from Azerbaijan to western countries and the dire shortage of young and well trained professionals willing to work for low pay in government institutions instead of applying for well paid jobs in the oil industry. Also, the necessity to improve the quality of education is one of the main challenges for the future. There is a set of regulations on university education issued by the Ministry of Education in accordance with the Bologna process, but their implementation has barely begun and that only for Baku state university for the time being.

2. Signature and ratification of Council of Europe conventions

32. As of 1 March 2007, Azerbaijan has ratified 49 Council of Europe conventions out of 200. We are pleased to note that on 4 April 2006 Azerbaijan ratified Protocol No. 14 to the European Convention on Human Rights (ECHR). Azerbaijan has neither signed nor ratified Protocol No. 13 ECHR on the abolition of the death penalty in all circumstances.

33. According to information provided by the Registry of the European Court of Human Rights, as of 9 November 2006, 316 cases against Azerbaijan were pending before the Court, 5 were declared admissible and 18 were communicated. The first judgment of the Court on the merits was published on 16 November 2006 in the case *Hajiyev v. Azerbaijan* (Application No. 5548/03). The Strasbourg Court found a violation of Article 6 § 1 (fair trial).

34. On 11 January 2007, the Court delivered its judgment in the case of *Mammadov (Jalaloglu) v. Azerbaijan* (application no. 34445/04). The Court held unanimously that there had been a violation of Article 3 (prohibition of torture) of the ECHR as regards not only the ill-treatment of the applicant in police custody, but also the lack of effective investigation into the applicant's allegations of ill-treatment. The Court found also a violation of Article 13 (right to an effective remedy) of the Convention. Mr Jalaloglu was the Secretary General of the Democratic Party of Azerbaijan (ADP). He was arrested few days after the presidential elections of 2003, charged with "organising public disorder" and "use of violence against state officials" and sentenced to three-years' imprisonment. He was considered to be a political prisoner by the independent experts appointed by the Secretary General and released early by way of a presidential pardon decree. The judgment of the Strasbourg

¹³ According to the State Statistics Committee, for the first nine months of 2006 inflation has been around 8%. According to information by the International Monetary Fund (IMF), the 12-month Consumer Price Indices (CPI) inflation rate increased to 10.2% in August 2006 from 5.5% in December 2005.

¹⁴ See also section 3.2.2. below.

¹⁵ In protest of the price increases, the Azadliq opposition bloc organised an unauthorised demonstration on 26 January 2007 which led to the arrest of 19 persons. On 28 January and on 18 February 2007 the Musavat party staged two authorised demonstrations on the outskirts of Baku with several hundred participants and no incidents. Minor incidents were reported in the context of other protest actions conducted either in Baku or outside the capital. See also below, section 3.3.3.

Court in this case is very important since it opens the way for addressing similar cases and shows that the Azerbaijani domestic legal system is subject to the ultimate control of the Strasbourg's jurisdiction.

35. The only remaining convention mentioned in Opinion No. 222 (2000) which Azerbaijan has signed but not yet ratified is the European Charter for Regional or Minority Languages, although it had undertaken to do so within one year of its accession to the Council of Europe. We were informed that the Azerbaijani authorities do not consider it possible to ratify the Charter in the near future. The explanation given is that there is currently a lack of funds for financing all the measures that should be taken in order to duly implement the Charter. We cannot consider this explanation satisfactory and urge the Azerbaijani authorities to reconsider the matter and honour a commitment they freely undertook when joining the Council of Europe.

3. Honouring of obligations and commitments

3.1. Pluralist democracy

3.1.1. Separation of powers

36. Upon its accession to the Council of Europe Azerbaijan undertook:

"to continue the reforms aimed at strengthening the independence of the legislature vis-à-vis the executive, so that the former can exercise the right to put parliamentary questions to members of the government" (Opinion No. 222, para. 14, iii.c).

37. The 1995 Constitution as further amended by referendum on 24 August 2002 provides for a strong presidential system. All previous monitoring reports have insisted on the need to strengthen the application of the constitutionally guaranteed principle of separation of powers in practice and in particular the need to strengthen the role of the Parliament *vis-à-vis* the executive.

38. We would like to recall that Article 95, paragraph 14, of the Constitution provides as one of the "competences" of the Milli Mejlis (Parliament), "the taking of a decision regarding a vote of confidence in the Cabinet of Ministers of the Republic of Azerbaijan". To provide a mechanism allowing the legislature to put questions to members of the government in line with the accession commitment, a Constitutional Law "on additional safeguards to the right of the Milli Mejlis to address the issue of confidence to the Cabinet of Ministers" was adopted in 2001 soon after Azerbaijan's accession to the Council of Europe.

39. However, as the Venice Commission noted in its Opinion on the matter¹⁶, this Constitutional Law did not introduce any changes to the political system of Azerbaijan. It provided for "a mechanism whereby the Milli Mejlis is enabled to exercise, by means of a "recommendatory" vote of no confidence, some control over the executive." The Constitutional Law sets out the framework of the mechanism. However, according to the Venice Commission, important procedural details still needed to be formulated, possibly in the Internal Rules of the Milli Mejlis.

40. For the rest, the Venice Commission clearly concluded that any substantial strengthening of parliamentary control would require a revision of the Constitution by referendum. The referendum held in August 2002 did not introduce such a strengthening of parliamentary control.

41. In reply to our requests, the Azerbaijani parliamentary delegation informed us that the Internal Rules of the Milli Mejlis contain a specific provision (Article 21-1) concerning the annual reporting of the government on its activities before the Milli Mejlis. This reporting is to take place at the fifth sitting of each spring session of the Parliament. According to the established practice, such sittings are not confined to formal reporting, but include a broad debate concerning the activities of the government, replies of its members to questions put by the parliamentarians, and critical observations and recommendations made by the latter to the members of the government. As a result of such debates, the issue of confidence to the government may be put forward¹⁷.

¹⁶ See Doc. CDL-INF(2001)26.

¹⁷ During the debate on the annual report of the government to the parliament, on 16 March 2007, a fight between two MPs broke out for the first time in the history of the Azerbaijani parliament. As a result of the

42. The delegation also informed us that currently no revision of the Constitution is envisaged as to strengthening parliamentary control over the executive.

43. Since accession to the Council of Europe in 2001 and the referendum of 2002, the Parliament has *de facto* progressively reinforced its role as a forum for political debate and an instrument for enacting laws and pushing forward democratic reforms. For us, it is of utmost importance that the Parliament's role *vis-à-vis* the executive be further strengthened and we fully encourage any initiative which goes in that direction. We would therefore invite the authorities of Azerbaijan to consider the possibility of a constitutional revision to strengthen the parliamentary control over the executive and thus improve the balance of powers in the country at a later stage, for instance after the presidential elections of 2008. The Venice Commission could assist them in this endeavour.

44. We would also welcome the work of parliamentary committees being further developed and that more and more laws on important matters such as those related to the honouring of commitments undertaken upon accession to the Council of Europe being elaborated and discussed within the Parliament and its committees.

45. Another concrete measure which could facilitate genuine democratic debate within the Parliament and thus increase its importance would be the lowering of the percentage required to form a faction. At present, political groups must have at least 20% of the voting strength to form factions. In other words, no less than 25 MPs (out of a total of 125) are required for this purpose. This is an astonishingly high percentage, especially if we consider that in most Council of Europe member states this figure varies from 3% to 5%.

46. The Azerbaijani parliamentary delegation explained to us in their comments that, in their parliament, each individual parliamentarian, irrespective of his or her party affiliation, is entitled to and actually enjoys on an equal footing the same rights (such as the right to legislative initiative, the right to submit any matter to the parliament for consideration etc.) as those normally granted to factions in other Council of Europe member States. Nevertheless, the delegation said that they might reconsider this issue.

47. For our part, we would urge our Azerbaijani colleagues to lower the percentage required to form a faction, since such a development could help create organised political factions and thus improve the quality of debates and strengthen the role of the parliament.

48. The parliamentary delegation of Azerbaijan to our Assembly has undoubtedly a special role to play in pushing forward initiatives aimed at reinforcing the role and powers of the parliament. In this respect, the more pluralist this delegation is, the more representative and efficient it is. We therefore in our preliminary draft report expressed our regret that the only member who appeared on the list of the delegation as coming from the Musavat party – considered to be the biggest opposition party currently represented in Parliament – was no longer a member of this party and we asked for an explanation on this very important issue.

49. In its replies, the Azerbaijani delegation considers this problem "a rather complex one". The delegation argues that Ms. Aynur Guliyeva participated in the 2005 parliamentary elections as member of the Musavat party. It is not clear for them what happened after the elections. The delegation says that Ms Guliyeva continues to regard herself as a member of the Musavat party and that within the party itself there are various views on this matter among the members. Therefore, although they respect the opinion of the leadership of the Musavat party, the members of the delegation believe that any premature decision on this delicate matter would be irrelevant.

50. In the meantime both the leader of the Musavat Party, Mr Isa Gambar, and all MPs from the Musavat Deputy Group (currently five) wrote to the President of the Assembly, Mr van der Linden, to complain about the current situation and ask that members of the Musavat party be represented in the Azerbaijani delegation to the Assembly, in time for them to participate in the debate on Azerbaijan scheduled for the April part-session. Mr van der Linden passed on these letters to us, since, as President of the Assembly, he cannot take any unilateral action on this matter.

incident, the parliamentary immunity of MP Huseyn Abdullayev was lifted and he was charged with hooliganism and beating. His pre-trial detention for two months was ordered by the court on 20 March 2007.

51. We are in contact with the Chairperson of the delegation, Mr Seyidov, hoping that he can find a satisfactory solution on what we agree is a delicate matter, and this before the April Assembly debate. We should be able to report on the outcome of our joint efforts during the discussion at the committee.

3.1.2. Electoral reform

52. In its Resolution 1505 (2006), adopted in June 2006 after the May 2006 re-run elections, the Assembly noted that the electoral legislation had not been amended in line with the recommendations repeatedly made by the Venice Commission in time for the re-run elections. The Assembly, however, welcomed the fact that the Azerbaijani authorities had requested, albeit at a late stage, the assistance of the Venice Commission with the reform of the Election Code of Azerbaijan. The Assembly in particular urged the authorities of Azerbaijan to:

"- amend the provisions regarding the composition of the electoral commissions at all levels so as to establish an election administration which enjoys the confidence of the electorate and of all the stakeholders;

- further develop the procedure for an efficient handling of election-related complaints and appeals with the assistance of the Venice Commission."

53. Amendments to the Electoral Code were transmitted by the Presidential Administration to the Venice Commission in September 2006 and have been analysed by its experts¹⁸. A working meeting between the experts of the Venice Commission and representatives of the Presidential Administration of Azerbaijan took place in Strasbourg on 7 December 2006. It was agreed that new draft amendments would be presented to the Venice Commission taking into account the discussions held recently in Strasbourg and that a working meeting on these would be organised in March 2007.

54. During our meetings with the authorities, including at the highest level, we stressed the importance of electoral reform as a crucial pre-requisite for the 2008 presidential elections to be held in accordance with Council of Europe standards and commitments. We welcome the on-going co-operation with the Venice Commission and underline that, despite technical improvements, what is essential for us is that this co-operation leads to a long-due revision of the Electoral Code in line with the recommendations made by the Assembly in June 2006 as regards in particular: the issue of the composition of the electoral commissions at all levels so as to establish an election administration which enjoys the confidence of the electorate and of all the stakeholders; and a better procedure for the efficient handling of election-related complaints and appeals. It would facilitate our Assembly debate in April 2007 if an opinion of the Venice Commission (even a provisional one) is available on the issues addressed in the new draft amendments.

55. The Speaker of Parliament informed us that among the proposals under consideration were the creation of professional electoral commissions. As for the opposition parties, they have for years argued that the opposition should be equally represented, together with the ruling YAP party, on election commissions at all levels.

56. In accordance with the Electoral Code in force, the Central Electoral Commission (CEC) is composed of 18 members, of whom six are appointed by the ruling majority, six by the opposition parties which are represented in Parliament and six by independent MPs.

57. However, during our visit to Baku, the CEC operated with only 13 members. For four of the remaining seats candidates had to be proposed by the opposition and for the fifth one the candidate should be proposed by independent MPs in consultation with the opposition. When we raised this issue with the Chairman of the CEC and the Speaker of the Parliament, they told us that the current situation was due to the fact that the Musavat party had not proposed any members although it was

¹⁸ Since September 2003 a number of important suggestions on how to improve the Electoral Code have been made by the Venice Commission and OSCE/ODIHR in altogether six documents. For the most recent joint document see Final Opinion on the Amendments to the Election Code of the Republic of Azerbaijan, doc. CDL-AD(2005)029, para. 6.

invited to do so. The Chairman of the Musavat party told us that he had asked for certain guarantees but he never received a reply from the leadership of the Parliament.

58. In our preliminary draft report we urged the leadership of the Parliament, the CEC and the Musavat party to resolve this problem without further delay and allow for the CEC to operate in full. In its comments, the Azerbaijani delegation informed us that in order not to disrupt further the work of the CEC, the parliament, on 15 December 2006, elected three additional members nominated by the other opposition parties represented in the parliament. Still, one of the two remaining seats was reserved for the Musavat party.

59. We reiterate our request that the issue be resolved without further delay in order for the two remaining seats of the CEC to be properly filled.

60. We find of paramount importance that, in addition to the revision of the Electoral Code, for the 2008 presidential elections fully to meet Council of Europe standards, it should be made clear that violations of the electoral law by local authorities will not be tolerated but penalised and that those responsible will be charged and brought to justice. It is noteworthy that a few criminal proceedings were instituted following the November 2005 elections which finally resulted in the imprisonment of only one single person and the dismissal of others¹⁹. More resolute action is however needed to discourage future violations. We urge the authorities of Azerbaijan to pass on a clear message, in time for the 2008 presidential elections and at the highest political level, that electoral fraud will not be tolerated.

3.1.3. Local self-government reform

61. On joining the Organisation, Azerbaijan undertook to:

"amend, before the next local elections, the current legislation governing the powers of local authorities so as to give them greater responsibilities and independence, taking into account the recommendations made in this respect by the Congress of Local and Regional Authorities of Europe (CLRAE)" (Opinion No. 222, paragraph 14 iii. b)²⁰.

62. Experts from the Council of Europe finalised an Action Plan for local self-government reform back in 2003. This has not yet been implemented however.

63. It is worth noting that municipalities are recent institutions of local government in Azerbaijan: they started working as elected bodies only in 1999. Their term of office is 5 years.

64. Each municipality is administered by a council, elected directly, whose membership varies according to the size of the population, from five members in municipalities with populations of under 500 inhabitants to 19 members in municipalities with populations of between 100 000 and 300 000. There are special arrangements for the city of Baku, which is divided into 11 districts (decentralised entities) of varying size and population, and 48 municipalities ("devolved entities").

65. Recently, in close cooperation with the Congress of Local and Regional Authorities and the Norwegian Association of Local and Regional Authorities, three municipal associations (for cities, rural towns and settlements) have been established in Azerbaijan. At present, the Congress and the Norwegian Association support the joint work of the three associations and insist on the establishment of a co-ordination council or a co-operation agreement.

66. Beside municipalities, local executive authorities are appointed by the President of the Republic to exercise central government powers as decentralised bodies. According to the Constitution, "local executive power shall be implemented by the Heads of Executive power." The latter are appointed to and removed from positions by the President of the Republic.

67. In its Recommendation 126 (2003) on local and regional democracy in Azerbaijan, the Congress of Local and Regional Authorities underlined that further efforts needed to be made to bring

¹⁹ See Doc. 10959 (2006) paragraph 33.

²⁰ See in particular Recommendation 126 (2003) on local and regional democracy in Azerbaijan as well as Recommendation 206 (2006).

legislative provisions and their implementation fully in line with the Constitution and the European Charter of Local Self-Government, in particular by facilitating the full recognition of the powers and the responsibilities of the local authorities. This would also entail gradually increasing the tax-raising capacity of municipalities, defining more transparent and objective criteria for the distribution of state funds and clarifying the administrative supervision framework.

68. Moreover, the Congress recommended the setting-up of a city council directly elected by the citizens of the city of Baku (and other big cities which do not have an elected mayor at the city level) and of a local public administration acting at overall city level. The Congress has also encouraged a larger involvement of citizens and civil society in public interest matters and in the local decision making process.

69. Re-run local elections were held on 6 October 2006 in 603 municipalities, including newly established constituencies or old constituencies with vacant seats, and the 141 municipalities where the results of 2004 had been invalidated. They were observed by the Congress of Local and Regional Authorities. The elections were marked by a low turnout (33.9%) and the lack of an active electoral campaign.

70. While commending the authorities for the efforts made in conducting the local elections overall in compliance with international electoral standards, the Congress noted that "still serious irregularities in polling stations and attempts of influence/intimidation outside the polling stations were observed, and that most polling stations are difficult to reach or inaccessible for the elderly and people with disabilities".

71. A positive development which was reported to us by representatives of civil society is that the results in three municipalities had been invalidated upon appeal for violations of the electoral law.

72. In its Recommendation 206 (2006) on the re-run of local by-elections that were held in Azerbaijan on 6 October 2006, the Congress notes that it is clear that municipalities in Azerbaijan are still not allocated adequate responsibilities, the trained staff and resources that would enable them to play a consistent role and increase the level of trust from the central authorities and the population. Furthermore, in the opinion of the Congress, elements such as the low voter turnout and the lack of an active pre-electoral campaign reflect the small degree of priority conferred by governmental authorities and political forces to the real practice of local and regional democracy.

73. The Congress invited the Azerbaijani authorities to take all necessary measures aimed at granting municipalities a substantial share of public duties, ensuring that sufficient means are provided for their implementation and, with respect to the status of Baku and other large cities, to set up a city council directly elected by the citizens to run local public administration acting at overall city level.

74. We urge the authorities to implement the recommendations of the Congress.

3.2. The rule of law

3.2.1. Reform of the judicial system and the bar association

75. The need to reform and train the Azerbaijani judiciary, effectively eradicate corruption among judges and improve its present negative image has repeatedly been urged by the Assembly and other international and non-governmental organisations. The authorities of Azerbaijan, including at the highest level, recognise these problems, mostly due to the Soviet legacy, and the need to reform. The Council of Europe has invested a lot in this endeavour and the Ministry of Justice is a close and active partner. We therefore welcome recent positive developments with respect to judicial reform while being of course fully aware that their ultimate success will depend on implementation and that this is bound to be a longer process.

76. The Judicial Legal Council was created with Council of Europe assistance and is composed of representatives of the judiciary, prosecution, defence lawyers and the Ministry of Justice.

77. Following a law adopted by Parliament in December 2005, a presidential decree on the organisation of the judicial system was published in January 2006. It provides for the establishment of six courts of appeal in the country, each with a criminal, a civil and an economic section. The four existing economic courts will be increased to seven. Also, 17 new court buildings have been inaugurated.

78. Two further presidential decrees were signed on 17 August 2006 on the development of the judicial system in Azerbaijan and one on 2 November 2006 on the development of legal institutions in the Autonomous Republic of Nakhichevan. As a result, the number of judges in the country has increased from 320 to 476. One of the August 2006 decrees provided, *inter alia*, for the establishment of a Justice Academy which would be responsible for training professionals from the justice field.

79. On 11-16 December 2006, an Azerbaijan – Council of Europe Joint Working Group met in Baku and dealt with two major issues: continuation of the judicial reform and establishment of the Justice Academy. On the basis of the conclusions of the meeting, appropriate recommendations have been prepared which will be taken into consideration when establishing the Justice Academy. For our part, we underline the importance that the Academy of Justice, as the institution in charge of training of judges and prosecutors, be placed under the authority of the Judicial Legal Council in order to secure its independence from the executive.

80. Exams were organised to recruit new judges over the summer. 55 candidates passed four-round examination tests in what we heard was a fair and transparent selection procedure drafted in co-operation with the Council of Europe. These 55 candidates have now completed their training courses²¹ and are expected to be appointed as judges in the first half of 2007.

81. On 1 October, 700 candidates took part in an examination organised by the Judicial Legal Council in the context of a new selection procedure for judges. 301 candidates have taken a second written examination in December 2006; 188 of them have successfully passed through this stage.

82. The number of lawyers in Azerbaijan is insufficient: there are only 541 lawyers who are members of the "Collegium of Advocates", of whom only half are practising²². In parallel, there are about 100 private law firms each comprising 5 to 20 lawyers. However, only members of the Collegium can be defence lawyers in criminal cases in accordance with the law.

83. The lack of defence lawyers is even more flagrant in the regions: in Nakhichevan for example (population 300 000 people) there are only 3 lawyers, of which two in reality live in Baku. Very few lawyers specialise in criminal law, not only because it is more profitable to work in the private law firms which specialise in business and company law but also because of the difficulties in joining the Collegium.

84. The presidential decree of January 2006 announced the increase in lawyers and the improvement of legal aid in the regions. Thus, in order to increase the number of lawyers, the Collegium of Advocates held a bar exam on 4 March 2007. At the same time, in the light of the presidential decree of November 2006, bar exams were also organised in the Autonomous Republic of Nakhichevan with a view to increasing the number of defence lawyers in the region. 441 applicants filled in an application to sit the bar exams, 299 of whom passed successfully to the second stage. The State Students Admission Commission (SSAC) provided technical assistance to the Bar Association of Azerbaijan. The exams were observed by the representatives of the authorities, as well as representatives of local NGOs and international organisations including the Council of Europe. The international observers noticed the very low number of candidates under the age of 40 as well as the low number of female candidates. It seems that mostly men in their late 40's and early 50's took part in the exams. Those who have successfully passed the exams would take part in the 2nd stage known as an oral interview. The oral interview is expected to take place in April 2007.

85. It has long been clear that the establishment of a strong defence bar is critical in preventing human rights abuses and protecting the rights of the criminal defendants. So far, efforts to expand the

²¹ Mr Hammarberg, the CoE Commissioner for Human Rights, for example, gave them a lecture at the beginning of May 2006, during his visit to Azerbaijan.

²² With an Azerbaijani population of over 8.5 million, this number is totally inadequate to serve the legal needs of the country.

Collegium and lawyer licensing, to include in particular young lawyers, have failed. Despite offers of assistance and training for the Collegium, none has been accepted. The immediate effect of failing to admit new members into the Collegium of Advocates has so far translated into a legal profession that is unable to meet the demands and needs of the country.

86. We discussed this problem with the Minister of Justice who agreed with the need to up-grade and increase the number of defence lawyers.

87. We welcome the recently organised exams to the Collegium. However, in our view, the mere fact of organising new exams and increasing the members of the Collegium will not suffice in itself to solve the problem.

88. We therefore urge the competent authorities to reform the system of selection of lawyers who can then qualify as defence lawyers and ensure that their number and the quality of their services will be increased. State administered bar exams should be organised, following the model which has apparently been successfully applied for the judicial selection process and with the involvement of an impartial professional oversight commission. Council of Europe assistance could be requested for this purpose.

89. We would like to underline that thorough reform of the judiciary and of the criminal defence bar would ultimately put an end to allegations that persons are convicted in proceedings which do not respect the fundamental guarantees of a fair trial by independent and impartial courts and thus the creation of new "political" prisoners. A properly functioning judiciary and efficient defence lawyers would also put an end to persistent allegations of ill-treatment during investigations. The measures taken recently with respect to the judiciary constitute a very positive step. They should now be followed by proper implementation and similar reforms in the criminal defence system. We are encouraged by the fact that the presidential decrees in this field show that the political will to bring through such reforms exists at the highest level.

3.2.2. Combating corruption and organised crime

90. Upon accession, Azerbaijan undertook:

"to adopt, within one year of its accession, a law on combating corruption and, within two years of its accession, a state programme on combating corruption".

91. In Azerbaijan corruption is a major problem, which could jeopardise the strong economic growth and represent a threat to its social and political development²³. This is the conclusion of the first report published on Azerbaijan by the Group of States against Corruption (GRECO) on 23 June 2006²⁴.

92. Azerbaijan has been a member of the GRECO since 1 June 2004 and has ratified both the Civil Law and the Criminal Law Conventions on Corruption.

93. The GRECO found that Azerbaijan was making substantial efforts to address the problem of corruption, but nevertheless still appeared to be extensively affected by corruption, at all levels of society. To address this problem, a law on combating corruption was amended on 13 January 2004, complemented by a presidential decree on 3 March 2004. Also, in line with its accession commitments, the government has introduced a State Programme on Combating Corruption (2004-2006), a comprehensive anti-corruption strategy which required various authorities to implement legislative and organisation measures.

94. According to the GRECO, in carrying out this programme commendable progress has been made in adopting new legislation and amending existing legislation. However, the effective and timely implementation of the legislation and measures of the State programme is the challenge lying ahead for the authorities. This implementation will prove to be critical in the success of the efforts to reduce corruption in Azerbaijan.

²³ In Transparency International's corruption perception index 2006, Azerbaijan ranked 130 (out of 163 countries listed) with a score of 2.4 out of 10 (compared to 2.2 out of 10 in the 2005 index).

²⁴ See Greco Eval I-II Rep (2005) 5E, of 23 June 2006.

95. The GRECO addressed no fewer than 27 recommendations to the Azerbaijani authorities in order to help them to improve the efficiency of their fight against corruption. We urge the authorities of Azerbaijan to implement the recommendations of the GRECO.

96. The Prosecutor General informed us that 40 cases of corruption were under investigation by the special anti-corruption department and 76 public officials had already been brought to justice.

97. The GRECO report has been analysed by the Anti-corruption Commission under the Council for Management of Public Service and proposals for improving domestic legislation in line with its recommendations have been prepared. Four draft laws have been examined by experts from the Council of Europe.

98. We congratulated the Minister of Justice of Azerbaijan on his appointment as Vice-Chairman of the Executive Committee of the International Association of Anti-Corruption Authorities (IAACA) during the first international conference of IAACA in Beijing in October 2006.

99. As regards the fight against organised crime, the trial for kidnappings, money extortions and killings by the gang led by Hadji Mamedov, former high ranking official of the Interior Ministry, has been completed before the Court of Grave Crimes. The gang was caught in 2005 after a massive operation was launched by the Ministry of National Security.

100. This scandal led to the resignation of the Deputy Ministry of the Interior, the dismissal of the Deputy Ministry of National Security, of the Head of the Department of Criminal Investigations (who was the direct superior of Hadji Mamedov) and a few other low-ranking officers²⁵. However, no parliamentary hearings have been held on this serious case and no political responsibility at a higher level within the Ministry of the Interior has been assumed.

3.2.3. Follow-up to the issue of alleged political prisoners and humanitarian concerns

3.2.3.1. Implementation of Resolution 1457 (2005) and the Task Force

101. Upon accession to the Council of Europe, Azerbaijan undertook to:

"to release or to grant a new trial to those prisoners who are regarded as "political prisoners" by human rights protection organisations..." (see Opinion No 222, paragraph 14, iv, b).

102. The Parliamentary Assembly has since considered the honouring of this commitment on four occasions in January 2002, June 2003, January 2004 and June 2005 on the basis of reports presented by its Committee of Legal Affairs and Human Rights on the basis of a specific mandate.

103. In its Resolution 1457 adopted on this issue in June 2005, the Assembly welcomed the six pardon decrees which President Ilham Aliyev had signed since Resolution 1359 adopted a year and a half earlier (in January 2004). The Assembly in particular welcomed the presidential pardon decrees of March and June 2005 which allowed the release of all but three²⁶ of those prisoners who were recognised as political prisoners by the independent experts appointed by the Secretary General a few days after Azerbaijan's accession (in an effort to facilitate the decision on accession by the Committee of Ministers).

104. The Assembly also welcomed the setting up in June 2005 (two weeks prior to its debate) of a Task Force comprising representatives of the authorities and of human rights NGOs (hereinafter referred to as "the Task Force") for the purpose of "adopting a single position and approach to the issue of meeting the commitment and eliminating the problem".

²⁵ See also Resolution 1456 (2005) and Doc. 10569.

²⁶ These three prisoners had been considered by the independent experts as political solely because of the fact that they had been tried by a military court not meeting the requirements of Article 6 ECHR (by reference to the judgment of the European Court of Human Rights in the *Incal v. Turkey* case). All three of them have been granted a re-trial by a civil court and sentenced to life imprisonment. The Task Force concluded that, taking into account the alleged violent nature of their crimes and other specifics of the case, no insistence would be made for their extra-judicial release. During their May visit, the rapporteurs met one of these prisoners in the Gobustan prison, Mr Arif Kazymov (case No. 15 in the initial "list of 716").

105. The Assembly concluded that it "[could] not consider the issue of political prisoners to have been finally resolved" and asked the Azerbaijani authorities to take a number of measures in order to find "a speedy and permanent solution to the issue of political prisoners and presumed political prisoners".

106. In the absence of any specific mandate for the Committee of Legal Affairs and Human Rights on this issue, it is at present up to the Monitoring Committee and its co-rapporteurs on the honouring of obligations and commitments by Azerbaijan to inquire into the honouring of this commitment and check on the follow-up given to Assembly Resolution 1457 (2005) and the last report by Mr Malcolm Bruce (Doc. 10564)²⁷.

107. This follow-up is entrusted to the Task Force which comprises the major NGOs active in the field of human rights, a number of MPs (notably the Chairman and members of the PACE Delegation) and officials from the presidential administration, the Ministry of Foreign affairs and the Ministry of the Interior.

108. Upon its establishment in June 2005, the Task Force signed a memorandum in which the authorities of Azerbaijan have committed themselves to "make use of every legal remedy (amnesty, review of cases by higher-instance courts, conditional release, release for health reasons, pardon) to settle this problem."

109. Also the Task Force agreed to work on the basis of two lists referred to in Assembly Resolution 1457 (2005):

- a list of 41 people who have not been recognised by the independent experts as political prisoners, but whose cases raised concerns for the Assembly and could be resolved by pardon based on humanitarian reasons, conditional release, etc;
- another list of prisoners (initially 107 and in Resolution 1457 (2005) brought down to 45) who, based on certain grounds, particularly due to alleged violations of their fair trial rights, could be considered for release by the Task Force.

110. Since June 2005, the above-mentioned lists have been modified and the number of persons concerned has been decreased. However, we did not obtain any document signed by all sides of the Task Force indicating how many persons on these two lists can no longer be considered political prisoners (for instance because their re-trial on the merits by a higher court has given them the right to apply to the European Court of Human Rights)²⁸.

111. The reason for this is that the Task Force on which so much hope had been placed in June 2005 has been inactive until recently. Since a meeting held in the presence of the rapporteurs during their visit in May 2006, no other meeting had been convened until a few days before our arrival at the end of October 2006.

112. Moreover, as far as we know, no concrete action was taken as to the proposal of passing an amnesty law by Parliament although the authorities had promised in June 2005 to consider this solution and had reiterated this undertaking during the May 2006 meeting of the Task Force in the presence of the rapporteurs.

113. Also, according to NGOs members of the Task Force, on 11 appeals to the Supreme Court by persons mentioned on the lists of the Task Force and sentenced prior to the ratification of the ECHR by Azerbaijan, eight were declared inadmissible on procedural grounds and no review of the merits of the case took place²⁹. This prevents the applicants from usefully lodging an application to the European Court of Human Rights and renders groundless the argument of the authorities that, to the

²⁷ During the May 2006 mission of (the then co-rapporteur) Mr Gross and Mr Herkel, the rapporteurs inquired into the follow-up given to Resolution 1457 and held meetings with prisoners.

²⁸ Different figures have been given to us by one or another side which, for avoiding any confusion, we do not wish to report.

²⁹ Cf. the judgment of 28 March 2006 of the European Court of Human Rights in the case *Melnyk v. Ukraine*, Application No. 23436/03. See also the Court's judgment of 16 November 2006 in the case *Hajiyev v. Azerbaijan*, Application No. 5548/03.

extent that persons can be re-tried and then apply to the Strasbourg Court, they cannot be considered as political prisoners. Again, review of the cases by higher-instance courts was mentioned in the June 2005 memorandum as one of the legal means to be considered for the solution of the remaining cases. The same was the case for conditional release; however legislation on conditional release was not applied in all cases concerned: six people were conditionally released but three had to serve their entire sentence.

114. In October 2006, the President issued a pardon which led to the release of some ninety-nine convicts including two journalists. However only two persons among those released were mentioned on the lists of NGOs members of the Task Force.

115. Under these circumstances, the NGOs refused to participate in the meeting which was convened by the Parliament just prior to our visit in October 2006. We insisted on the need to reactivate the Task Force and underlined the importance we attached to its efficient work.

116. Finally the NGOs accepted our proposal that a meeting of the Task Force be organised in the Council of Europe Office in Baku. The meeting took place in our presence on 2 November 2006. We urged the members of the Task Force to adopt clear working methods and fix a calendar of regular meetings (for instance once a month). A further meeting was organised – again in the Council of Europe Office – on 4 December 2006. A third meeting was organised on 17 March 2007 in Parliament.

117. We welcomed this development and thanked the Chairman of the Parliamentary Delegation to PACE, Mr Seyidov, for his commitment to meet our expectations and carry on with this important task. We also thanked the Speaker of Parliament who has expressed his full support and the Representative of the Secretary General in Azerbaijan for hosting two meetings of the Task Force.

118. We urged the Task Force to produce concrete results in the nearest possible future. It is upon the achieved results that the efficiency of the Task Force will ultimately be assessed and prove that there is no need for Assembly rapporteurs, with general or specific mandate, to follow-up the issue of implementation of Resolution 1457.

119. In this respect, we mostly welcome as an important step forward the presidential pardon decree of 19 March 2007 which led to the pardoning of 11 persons appearing on the lists of NGOs members of the Task Force³⁰. As a result, ten persons were released and one person's sentence was reduced from life imprisonment to 25-year imprisonment. We had personally requested the release for humanitarian grounds of two of those pardoned during our November 2006 visit: Mr Aliyev Arif Muzaffar oglu and Mr Ibrahimov Shamil Mahamahasan oglu. Also, among those pardoned appears Mr Said Nuri, one of the leaders of the *Yeni Fikir* Youth Movement, whose suspended sentence has now been cancelled³¹.

120. The remaining five prisoners in the list we handed into the authorities with a request that their release be considered for humanitarian grounds are:

- Natiq Efendiyev
- Rasim Alekperov
- Sahavat Gumbatov
- Akif Huseynov³²

³⁰ A total of 100 prisoners were included in the last presidential decree dated 19 March 2007.

³¹ About the other two youth leaders see below section 3.2.3.2. Mr Said Nuri was arrested on 12 September 2005. He was temporarily detained in confinement at the Narimanov District Police Administration, where he was reportedly accused of "preparation of a coup d'état and getting financial support from interested forces". The "evidence" was his participation on the same dates in a seminar in Poland organised by the Institute of European Democracy. On the day after his arrest, Mr Nuri was hospitalised because of a poor health condition. On 14 September 2005, it was reported that Mr Nuri had received necessary treatment and was released. However, the next day, he was rearrested on his way to work, although the Prosecutor's Office stated that he was "invited" by the investigator. On 14 November 2005, Mr Said Nuri was released from hospital where he had been since 15 September 2005, and was placed under house arrest. During the rapporteurs' visit in May 2006, the then rapporteur, Mr Gross, met with Mr Nuri. On 12 July 2006, Mr Nuri was given a suspended sentence and was allowed to travel to Moscow to receive treatment for his thalassaemia condition.

³² For the information submitted by the Azerbaijani authorities regarding this case see doc. AS/Mon (2007) 07.

– Telman Ismayilov³³

121. We draw particular attention to the cases of Mr Natiq Efendiyev and of Mr Alekeperov:

– Mr Natiq Efendiyev had been considered as a political prisoner by the independent experts of the Secretary General. His release following a presidential pardon in March 2005 was welcomed by the Council of Europe and other international organisations. He was however re-arrested few weeks prior to the parliamentary elections, on 15 October 2005. He was initially convicted to a 15-day administrative detention for resistance during arrest. At the expiry of the 15-day term, he was charged with attempted coup d'Etat with Rasul Guliyev and remained in detention on remand. This charge was later dropped and he was finally sentenced on 7 September 2006 to five years' imprisonment for illegal possession of weapons. We received allegations raising serious doubts regarding the evidence on which his conviction was based as well as claims by his family and lawyer that he was subject to electroshocks during his detention. His appeal was however rejected in November 2006 and the Supreme Court is now the last domestic instance for reviewing his case, including the validity of evidence and alleged ill-treatment. According to the Azerbaijani delegation, neither Mr Efendiyev nor his lawyer had made any complaints of him having been tortured. With respect to our concerns about the health situation of Mr Efendiyev, the delegation informed us that he was under continuous medical supervision, and his last medical examination was carried out on 26 December 2006. Mr. Efendiyev was diagnosed with "localised scleroderma in the remission phase".

– Mr Alekperov is an old man and suffers from serious nervous and heart problems³⁴. He cannot walk alone (or even dress himself) and he is constantly given help by other prisoners and the prison staff. He had been wounded three times (in 1991, 1992 and 1993) and this continues to hurt him and restrict his movements. We firmly hope that his release on humanitarian grounds will be seriously considered.

122. We hope that the recent presidential decree will encourage the Task Force to continue its work and produce further results. One of the first tasks of the Task Force should now be to sign an up-date of the June 2005 lists indicating to us how many cases have since been resolved. It is for the Task Force to establish other cases which need consideration, including on humanitarian grounds.

123. We invite the Task Force to check also on those persons sentenced to long terms of imprisonment or to life sentences only because they were relatives, employees or mere acquaintances of people who have meanwhile been pardoned or released. These people should not be forgotten³⁵. Consideration should also be given to the proposals to extend the mandate of the Task Force to include trial monitoring and to invite the judiciary to be also represented.

124. The Criminal Code needs also to be amended as recommended by the Assembly in Resolution 1457. We welcome the fact that the Code has been expertised by the Council of Europe and urge the Azerbaijani authorities to take into account the recommendations made by the experts and transmitted to them in mid-December 2005, as regards in particular the compatibility of the code with ECHR and the case-law of the European Court of Human Rights, as well as with Council of Europe standards in the criminal field.

125. Finally we reiterate that an end to the allegations of dubiously motivated criminal prosecutions depends on the elimination of "the serious dysfunctions of the Azerbaijani judicial system"³⁶ and the creation of an independent and well trained judiciary.

³³ For the information submitted by the Azerbaijani authorities regarding this case see doc. AS/Mon (2007) 07.

³⁴ Mr Denis Bribosia, Special Representative of the Secretary General of the Council of Europe to Azerbaijan, met Mr Rasim Alekperov on 16 November 2006 upon our request. The meeting was organised by Mr Seyidov and the Ministry of Justice. Other representatives of international organisations have also visited Mr Alekperov. The Red Cross has also details on the health problems of which Mr Alekperov suffers. Mr Alekperov is considered a national hero, and is in fact the only person who was awarded a medal by two different Presidents of Azerbaijan.

³⁵ See Doc. AS/Mon(2006)20 with respect to the case of the nephews of former Speaker of Parliament Rasul Guliyev.

³⁶ See Resolution 1457(2005), paragraph 8, where the Assembly "firmly condemned" such serious dysfunctions "resulting in the creation of new cases in which dozens or even hundreds of people find themselves charged and tried collectively for offences, such as attempted coups, offences against state security, terrorism and serious breaches of the peace, which do not always relate to the facts".

3.2.3.2. Meetings with prisoners

126. During our recent visit to Azerbaijan we were allowed to visit in prison the two leaders of the *Yeni Fikir* Youth Movement, Mr Ruslan Bashirli, Chairman, and Mr Ramin Tagiyev, Vice-Chairman³⁷. We also visited in prison the well-known poet and opposition satirical journalist, Mr Sakit Zahidov. We thank Mr Seyidov and the Ministry of Justice for organising these meetings³⁸.

127. Mr Ruslan Bashirli was arrested on 3 August 2005, on the eve of his wedding, on charges under Article 278 of the Criminal Code of "plotting to overthrow the Azerbaijani leadership at the instigation of Armenian intelligence agents", with whom he allegedly met in Tbilisi on 28 and 29 July 2005³⁹. Mr Ramin Tagiyev was arrested 40 days later, in September 2005. He was detained in Bayil Prison on suspicion of preparing the forced seizure of power in the same case as Mr Ruslan Bashirli's.

128. The trials for Mr Bashirli, Mr Tagiyev and Mr Nuri started on 31 March 2006 in the Court of Grave Crimes. Although the Code of Criminal Procedure and the law on courts and judges require cases punishable by life imprisonment to be tried by jury, no jury was appointed. Upon our request for explanations, the Azerbaijani delegation informed us that, according to the transitional provisions of the law on courts and judges, "the provisions of this law shall take effect after the judicial reforms are completed and the specific law is adopted". Since the judicial reforms have not yet been completed and the law on jury has not yet been adopted, it has not been possible for Mr R. Bashirli, Mr R. Tagiyev and Mr S. Nuri to be tried by a jury. Also their trial was initially held in camera. Journalists and human rights activists were granted access later in April 2006. After the defendants refused to appoint lawyers in order to conduct their own defence, the court appointed lawyers to represent them who were not familiar with the materials of the case. Later on, they were defended by a lawyer of their choice.

129. On 12 July 2006, Mr Bashirli was sentenced to 7-year imprisonment, Mr Tagiyev to 4-year imprisonment and Mr Nuri to conditionally suspended 5-year imprisonment because of his health problems. The Court of Appeal reduced Mr Tagiyev's sentence to 3-year imprisonment and for the rest rejected the defendants' appeal. In this respect, the Azerbaijani delegation drew our attention to the fact that all three members of the *Yeni Fikir* Youth Movement were convicted under Article 278 of the Criminal Code which provides for heavier sentences, namely imprisonment ranging from 10 to 15 years. As said above, Mr Nuri's suspended sentence was cancelled by the presidential decree of 19 March 2007. The case of the other two youth activists is now pending before the Supreme Court.

130. Mr Bashirli told us that following his arrest on 3 August 2005, he was refused access to his lawyer until 6 August 2005. During these first days of police custody, he said that he had been severely beaten and that he still suffers as a result. He described to us the details of his ill-treatment which he had already submitted to the trial court with no result. On 6 August, he was transferred to the Bayil pre-trial detention centre. No medical examination was allowed to him for two months. He also informed us of the various violations which allegedly took place during the trial proceedings. The information he gave us coincided with what we were told by representatives of international organisations who observed the trial once they were allowed access. Mr Bashirli also told us that he suffers from a kidney problem pre-dating his arrest.

131. In its comments, the Azerbaijani delegation refutes in detail the allegations made by Mr Bashirli⁴⁰. According to the delegation, during the investigation, no request for medical examination

³⁷ The other Vice-Chairman, Mr Said Nuri, had been given a suspended sentence and was allowed to travel to Moscow to receive treatment for his thalassaemia condition. His suspended sentence was cancelled by the presidential decree of 19 March 2007.

³⁸ During their May 2006 visit, the rapporteurs were refused access to the leaders by the Prosecutor General because their trial was on-going.

³⁹ A video showing him taking money from allegedly Armenian secret service agents was broadcasted in all media in Azerbaijan. Mr Bashirli and his defense lawyer claimed that this video footage had been cut up 24 times in order to distort Mr Bashirli's words so as to incriminate him. The accused admitted that a meeting had taken place in Tbilisi, but said that they believed that they were meeting with Georgian civil society activists and the money received from them to be intended for democratisation activities.

⁴⁰ See doc. AS/Mon (2007) 07.

was made, either by Mr Bashirli or by his lawyers, regarding Mr Bashirli's kidney problem, and no complaints were submitted that he had been the victim of violence.

132. We are not in a position and it is not our role to judge which side is right and which is wrong. The fact is that Mr Bashirli has complained of ill-treatment as well as of a number of procedural violations before the trial courts. We therefore hope that the Supreme Court will consider the reported violations of proceedings before the lower courts and examine the allegations of his ill-treatment during police custody. The Task Force could also consider this case given the health problems Mr Bashirli allegedly suffers from.

133. Mr Sakit Zahidov (Mirza Sakit) was arrested on 23 June 2006. He was sentenced on 4 October to a three-year prison sentence for illegal possession and use of drugs. 10 grams of heroin were found in his pocket while he was being searched in the police station.

134. When we met him in prison he told us what he has always maintained since his arrest, namely that the illegal substance was planted on him and that he neither uses nor deals drugs. Police admitted in court that a urine drug test, performed on the same day of his arrest, was clean. No blood drug test was performed. According to doctors called to testify in court, statements they wrote in medical documents calling Mr Zahidov a drug addict were based on merely visual assessments. Mr Zahidov suffers from heart problems.

135. Mr Zahidov's appeal was rejected by the Appeal Court on 15 December 2006. An appeal is now pending before the Supreme Court as the last domestic remedy. We hope that the Supreme Court could consider Mr Zahidov's conditional release pending its decision so that Mr Zahidov can be treated for his heart problems. In the light of the Supreme Court judgment, the Task Force could consider examination of Mr Zahidov's case because of his health problems.

3.2.3.3. Other cases of prisoners arrested in mid October 2005 for corruption charges

136. The following high level officials were arrested in mid October 2005 for corruption charges (and attempted coup d'Etat):

- Farhad Aliyev, former Minister of Economic Development
- Fikret Yusifov, former Minister of Finance
- Rafiq Aliyev, President of AzPetrol company, brother of Farhad Aliyev
- Ali Insanov, ex-Minister of Health⁴¹
- Akif Muradverdiyev, ex-Head of the Management Department of the Presidential Administration
- Fikret Sadikhov, ex-MP and ex-president of Azarkimya [Azerbaijani Chemistry] state company in Sumgayit
- Nazim Ibrahimov, ex-Head of the Health Ministry personnel department
- Akif Maharramov, ex-Head of the ministry's pharmacy department
- Eldar Salayev, academician, former President of the National Academy of Science
- Chingiz Abdulov, member of ADP, Siyazan

137. Mr Farhad Aliyev, ex-Minister of Economic Development and a prominent businessman, was arrested on 19 October 2005 on the following charges: attempting to organise a violent coup d'etat; organisation of massive unrest; corruption; economic mismanagement; embezzling state property. Recently, it has been alleged that he had ordered the murder of a well-known opposition journalist, Elmar Huseynov, but no charge has yet been brought against him on this ground.

138. Mr Rafiq Aliyev was arrested on 19 October 2005 at Heidar Aliyev Airport where he was boarding a plane to Moldova. He was arrested for allegedly attempting to smuggle USD 30 000, which is alleged to have been found in his luggage, without paying a customs fee of USD 600. He has since been charged with other offences and his detention at the Ministry of National Security has been

⁴¹ His trial started on 22 February 2007. Opposition journalists complain that they are prevented access to the court room on the pretext that there is not enough space.

extended several times. His Azeri lawyers have appealed against the extensions of the periods of his detention but without success⁴².

139. Upon his arrest, Mr Farhad Aliyev was taken to the Ministry of National Security (without having been able to make a phone call to his wife or being able to instruct, at that moment, the lawyer of his choice). According to the information submitted by the authorities, he was immediately informed of his rights, including the right to access to a lawyer of his own choice. Before he chose his own lawyer, Mr Aliyev had been provided with a lawyer by the state (Mr. V. Javadov). As of 21 October 2005, i.e. two days after his arrest, Mr. E. Guliyev and Mr. R. Mammadov, lawyers chosen by Mr. Aliyev himself, have been defending his rights. Later Ms. I. Javadova, a lawyer of his own choice, joined those two lawyers. Farhad Aliyev's family was officially notified of his situation by letter immediately after his arrest.

140. Following his arrest, Mr Aliyev was detained in solitary confinement for an initial three-month period. The period of his detention has since been extended, more recently until April 2007. His Azeri lawyers have brought a number of appeals against his detention before the District and Appeal Courts but without success. According to the information submitted by the authorities, the investigation is at present about to be finalised and the case is expected to be transmitted to the court in March 2007.

141. During our meeting with the Vice-Minister of National Security we asked whether we could meet detainees held in the pre-trial detention centre of the Ministry, in particular the two former Ministers of Economic Development and Health, Mr Farhad Aliyev and Mr Ali Isanov respectively. We were informed that organisations and institutions, such as the International Committee of the Red Cross (ICRC), the Ombudsman and the Azerbaijani Committee against Torture (a local NGO), had visited on several occasions the detention centre in the Ministry of National Security and met the detainees⁴³. For other meetings with detainees, permission of the Prosecutor General was required. The latter refused to allow us access arguing that, pending an investigation of the case, meetings with detainees – other than with their lawyers – are only allowed if they are in the interest of the investigation. A meeting with us was not in the interest of the investigation and, in the opinion of the Prosecutor General, could influence the independence of the judges who would later try these political figures. This refusal was the second in less than six months. Indeed, the first request for a meeting with Mr Farhad Aliyev was made prior to the May 2006 visit of the rapporteurs. The Azerbaijani authorities had then rejected the request at the very last moment. We regret their decision not to allow us to visit the two former Ministers in the pre-trial detention centre of the Ministry of National Security which is not in compliance with the country's duty to co-operate with the Monitoring Committee.

142. We subsequently discussed with the Prosecutor General in more detail the investigation against the former Minister of Economic Development. We made it clear during our visit and we reiterate that our interest in the case of Mr Farhad Aliyev is solely based on the following technical grounds: his health condition and his need for appropriate treatment; it is necessary to respect fair trial guarantees during his investigation and adequate judicial control of prolonged pre-trial detention in accordance with domestic legislation provisions and the European Convention of Human Rights which is directly applicable in the Azerbaijani legal system. Guilt or innocence in this case should properly be determined by a fair trial.

143. As confirmed by the Head of Cardiology at the Ministry of Health, Mr Farhad Aliyev suffers from stenocardia (a form of angina) and a poor blood supply (ischemia), and he is alleged to have suffered a number of hypertensive strokes since his arrest and detention in the investigation-isolation unit of the Ministry of National Security. The Vice-Minister of National Security ensured us that he had received appropriate medical treatment and gave us details. Information in writing was also provided in reply to an inquiry made by the Chairman of the Human Rights Sub-Committee of the Committee

⁴² Criminal cases were also opened against Mr Farhad Aliyev's relative Vasif Amirov, uncle-in-law Vasif Kazimov, deputies Ismayil Masimov and Qadir Huseynov, assistant Elshad Abbasov, Chairman of a Department Alihuseyn Shaliyev (who died in prison) and worker Rahman Latifov. Administrative cases were opened against his brother-in-law Khayam Huseynov, relative Ulfat Nabiyev, and drivers Ilgar and Samir Babayev.

⁴³ Thus, representatives of the ICRC met Mr Farhad Aliyev on 10 November 2005, 26 December 2005, 21-23 February 2006, 7 March 2006 and 25 April 2006; the Ombudsman visited him on 12 November 2005, 26 December 2005, 7 November 2006 as well as in February 2007; representatives of the Azerbaijani Committee against Torture met him on 3 April 2006 and 2 May 2006. Medical doctors participated in some of these meetings.

on Legal Affairs and Human Rights. Mr Aliyev's lawyers claim that the treatment of their client was inadequate and that his health has seriously deteriorated.

144. Under these circumstances, we reiterated in our preliminary draft report the request that was made by the Sub-Committee on Human Rights on 4 October 2006 to allow Mr Aliyev's family to send for a foreign doctor of their choice to come and examine Mr Aliyev at their own cost.

145. In their comments, the Azerbaijani delegation reiterated that Mr Farhad Aliyev had been under permanent medical supervision and received adequate treatment. With a view to determining his health conditions the investigative body had decided that a medical examination should be carried out. Moreover, an alternative medical examination would be organised by Mr Aliyev and his lawyers by medical doctors of their own choice. We would like to know when this alternative medical examination is to be carried out.

146. As regards the procedural aspects of the case, the time-limit of pre-trial detention pending investigation has so far been (at least formally) respected since for the crimes for which Mr Aliyev is charged a maximum of 18-month detention on remand is allowed according to domestic legislation. The ECHR does not fix a maximum time-limit and considers the specific circumstances of each case, depending *inter alia* on the complexity of the investigation. The Prosecutor General ensured us that the trial would start not later than within 18 months after initial arrest and would be totally transparent and open to international observers.

147. However, a number of other procedural violations of both the domestic legislation and the ECHR (related to the arrest, first appearance before a judge, access to and contacts with a lawyer, judicial control of detention on remand, conduct of investigation etc.) have been reported to us by Mr Aliyev's lawyers. They have been refuted by the Prosecutor General. It is not for us to judge at this stage who is right and who is wrong. We hope that the trial court will appropriately examine allegations of any procedural violations which might have occurred during pre-trial investigation. An application lodged with the European Court of Human Rights by Mr Aliyev was registered on 13 October 2006.

3.3. Human Rights

3.3.1. National Action Plan on Human Rights

148. On 28 December 2006, the President of Azerbaijan signed a Decree on the National Action Plan on the Protection of Human Rights. The decree states that the guaranteeing of human and civil rights and freedoms is a nationwide task in Azerbaijan. The text was promulgated by the President bearing in mind the priorities determined by the UN "Millennium development goals" and by the Third Summit of the Council of Europe in the field of human rights protection, democracy and rule of law, to expand the activities in this sphere.

149. All sectors of public authorities are expected to contribute to the implementation of the Action Plan. The government is expected to engage local non-governmental organisations in the implementation of the Action Plan.

3.3.2. Media pluralism and freedom of expression

150. Upon its accession to the Council of Europe, Azerbaijan undertook:

"to guarantee freedom of expression and the independence of the media and journalists and particularly to exclude the use of administrative measures to restrict the freedom of the media."

151. In its Resolution 1505 of June 2006, the Assembly expressed its great concerns about violent incidents directed against journalists. The *Azadliq* newspaper correspondent Fikret Huseynli, the Russian-speaking *Zerkalo* newspaper sport correspondent Rustem Makayilli and the Deputy Chairman of the Popular Front Party of Azerbaijan and editor of the *Bizim Yol* newspaper, Bahaddin Haziyevev, were explicitly mentioned. During their May 2006 visit to the country, the rapporteurs visited Mr Bahaddin Haziyevev in intensive care in a Baku hospital where he was transferred following a brutal

assault on 18 May⁴⁴. The Assembly also expressed its concerns about the lack of progress in bringing to justice those responsible for the murder of Elmar Huseynov, the editor-in-chief of the *Monitor Magazine* who was gunned down in March 2005.

152. Regrettably, instead of improving, the general environment for the independent media in Azerbaijan has deteriorated since the June 2006 Assembly debate⁴⁵.

153. Despite the President's political moratorium on defamation, launched in March 2005, civil and criminal defamation proceedings continue to be brought against opposition journalists and newspapers by public officials leading to intimidation and self-censorship. Their number has significantly increased over the last months. While independent, opposition and pro-government media alike in Azerbaijan have been known to publish personal insults, the vast majority of defamation lawsuits are directed against opposition media. To mention a recent example, on 30 January 2007, a regional Azeri court sentenced a journalist from a local independent newspaper to two years in prison, and its editor to one and a half years of labour work, for libelling senior officials in articles published in September 2006.

154. Two of the journalists serving prison sentences for defamation were released following a Presidential pardon in October 2006. We welcome their release. However, we urge the authorities to consider a legal reform in this matter aiming at the decriminalisation of defamation. Relevant civil law provisions should also be revised to ensure respect of the principle of proportionality in accordance with the case-law of the European Court of Human Rights. It is expected that the Council of Europe expert opinion on the Criminal Code of Azerbaijan, including the provisions on insult and defamation, will be discussed during a meeting in March 2007 with the participation of the Organisation's experts.

155. We also welcome and further encourage efforts undertaken by the OSCE Office in Baku aiming at the decriminalisation of libel and insult in Azerbaijan. A working group comprised of MPs and independent media experts prepared a detailed analysis on Azerbaijan's defamation laws which were discussed at public events with international and local experts, MPs, government representatives, judges, journalists and lawyers. On 10 October 2006, Azerbaijan's first draft law on defamation was presented and members of the public were able to share their views on its importance for Azerbaijani society and make recommendations. By December 2006, opinions and ideas voiced at a number of meetings were incorporated into the final draft of the law and submitted to the permanent commission of the national parliament. The key features of the draft law are that it transfers defamation entirely into the civil sphere and establishes compensation for damages proportional to the offence and the ability of citizens and the media to pay.

156. At the same time, we also encourage efforts aiming at improving the professional standards and ethics of journalists in Azerbaijan. Journalists themselves should strive for such improvements. Council of Europe assistance could be sought.

157. On 23 June 2006, the well-known poet and opposition satirical journalist Sakit Zahidov (Mirza Sakit) was arrested. He was convicted in 4 October to a three-year prison sentence for illegal possession and use of drugs found in his pocket while he was being searched in the police station. His sentence has been denounced as being politically motivated and based on no credible substance by local and international human rights organisations. When we met him in prison he reaffirmed that the illegal substance was planted on him by police and that he neither uses nor deals drugs⁴⁶.

158. A few weeks before our visit to Azerbaijan, in October 2006, the largest weekly in the country, *Realni Azerbaijan* (circulation around 26 000) was closed down by its publisher without any

⁴⁴ Mr Bahaddin Haziyeu was kidnapped in the evening of 17 May, brutally beaten up, run over by a car and then dumped in a Baku suburb where he spent a whole night before being found. He claimed that two of his articles on corruption and lack of transparency in public institutions could have been the cause for what he thought was attempted murder and not just bodily assault. See Doc. AS/Mon (2006) 20.

⁴⁵ See also: Assembly Resolution 1535 (2007) on threats to the lives and freedom of expression of journalists, adopted on 25 January 2007 (Doc. 11143); the letter sent by Human Rights Watch to the President of Azerbaijan on 9 February 2007; the Report by Amnesty International on "*Azerbaijan: the contracting space for freedom of expression*", 24 January 2007, AI Index: EUR 55/003/2007; the Human Rights Watch 2006 Annual report on Azerbaijan; the US State Department Report on Human Rights Practices in Azerbaijan – 2006.

⁴⁶ See also above paragraphs 133-136.

explanation. The members of the Monitoring Committee had met its editor-in-chief, Mr Einullah Fatullayev, during the meeting of the committee in Baku in July 2005. Mr Fatullayev had published many articles on the Hadji Mamedov's gang case. We welcome the fact that the *Realni Azerbaijan* started to come out again in December 2006. However, we are at present concerned with the death threats that Mr Fatullayev received in early March 2007. We urge the law enforcement agencies to ensure his personal safety and investigate the origins of these threats.

159 Nijat Huseynov, a correspondent for *Azadliq* newspaper was attacked in broad daylight on the morning of 25 December 2006 as he walked to the bus stop from his home⁴⁷.

160. A journalist and an editor of a very low circulation newspaper ("Sanat") were arrested on 15 November 2006 on a charge of "stirring religious hatred" under Article 283 of the Criminal Code and have since been held in custody while their case is being investigated. Mr Rafik Tagi and Mr Samir Sadagetoglu were charged for the publication of an article criticising Islamic values and culture, entitled "Europe and us". The publication prompted protests from conservative Islamic supporters in the outskirts of Baku. Protesters threatened to kill the author of the article. The publication also raised protest in front of the Azerbaijan embassy in Teheran and threats from Iranian clerics. But several international organisations, such as the Committee to Protect Journalists, as well as local writers have supported the defendants. After having read a translation of the article, it is difficult for us to understand how this publication could "stir religious hatred". The court proceedings against the two journalists started on 19 March 2007⁴⁸;

161. On 13 October 2006, the National Television and Radio Council (NTRC) requested that some radio and TV stations, including ANS, Azerbaijan's most watched independent TV channel, should stop retransmitting BBC, Voice of America and Radio Liberty/Radio Free Europe programmes as from 1 January 2007. We therefore requested a meeting with the Chairman of the NTRC to clarify the situation. The legal arguments given to us by the Chairman of the NTRC were not clear. He also told us that draft amendments on the law on radio and television would be prepared to provide better regulations on this matter and we urged that Council of Europe experts be consulted.

162. It was during this meeting, that we were informed that a decision by the NTRC on prolonging the special licence of the ANS Television Channel was imminent. The NTRC Chairman told us that ANS had committed numerous violations of the law, namely regarding advertising (giving rise to 9 warnings and 2 fines). He said that he did not expect ANS to be closed down adding that the decision would be taken by the NTRC. We double-checked with the President of ANS TV and Radio Company who argued that they had paid the fines and complied with the warnings. We appealed to both of them for a compromise and they each promised they would do this.

163. We were thus taken by surprise when three weeks after our meeting, on 24 November 2006, we heard that the NTRC decided, on the basis of the violations of the law on radio and television, that the broadcasting licence of the ANS TV and Radio company would not be extended and that broadcasts by ANS would be suspended with effect as from 11.00 GMT. Soon after that, the technical equipment of ANS was dismantled by law-enforcement agents. The broadcasting activity of ANS TV and Radio stopped. We were informed that ANS was also required to pay a total amount of \$500 000 in penalties in the context of this taxation dispute.

164. Moreover, on the very same day (24 November 2006), the most vocal opposition newspaper, *Azadliq*, was evicted from the state-owned building assigned to it free of charge in the centre of Baku by the Mayor in 1992⁴⁹. The eviction took place within the hour following the decision of the First Instance Economic Court in favour of the claim submitted by the State Property Committee against

⁴⁷ Mr Huseynov was beaten and stabbed with a knife in the stomach. He said that prior to the event he was under surveillance. In addition he said that people had been recently calling him and threatening to punish him for his publications.

⁴⁸ For the arrest and charge with high treason of the editor-in-chief of a newspaper published in the Talysh language ("*Tolishi Sedo*" which means "Voice of Talish"), Mr Novruzali Mammadov, as well as the secretary of the same newspaper, Mr Elman Quliyev, see below section 3.3.6.

⁴⁹ According to information provided by the authorities, until 1992, the building in which the newspaper was located belonged to the Baku branch of the Teachers Training Institute. In 1992 the latter was evicted from the building without any court decision. Moreover, the newspaper passed on some of its premises to the *Turan* news agency, as well as to the opposition's party, Popular Front, without any lease agreement.

the newspaper for non-payment of rent. The State property Committee claimed that the 1992 agreement between the paper and the Mayor of Baku was illegal and that the building should be given back to the Teachers Training Institute. The eviction was executed by police officers, including special forces, who surrounded the *Azadliq* Building and ordered everyone out. Other outlets forced to leave the same building were *Bizil Yol*, the *Turan* news agency and the *Yeni Nesil* Publishing House⁵⁰. Two representatives from each organisation were allowed to stay in the building overnight to guard equipment⁵¹.

165. We immediately expressed our concerns with respect to these developments to the Chairman of the Azerbaijani delegation to PACE. Mr Seyidov provided us with relevant information in writing on 4 December 2006, including an interview which Mr Ilham Aliyev, President of Azerbaijan, gave on these issues to the state television on 28 November 2006.

166. In his interview President Aliyev said that he had always supported ANS considering it important to strengthen independent media in Azerbaijan. He called for the case to be settled in the frame of law and not to be politicised. "If the channel fulfils the demands given in the warnings, the work of the channel will be continued," the President said. Mr Seyidov also informed us of the close interest in the development of the media and press in the country shown by the Speaker of Parliament.

167. For our part, we fully agree with the President of Azerbaijan when he stresses the importance of respecting the law and we had actually used similar words when we spoke to both the NTRC Chairman and the ANS President. However, in this case there seems to be a disagreement on the application of the law.

168. It is not for us to decide which side is right and which is wrong and whether the Azeri law has been correctly applied. This is for the Azeri competent authorities and ultimately for the Azeri courts. However, by reference to the case-law of the European Court of Human Rights, we consider that revoking the licence of a television station seems a disproportionate measure compared to the violations of the law on radio and television allegedly committed by ANS⁵².

169. Besides the legal aspects of the case and pending a final decision on the legal case and technical matters, we appealed to the authorities of Azerbaijan to stop further harming the image of media freedom in Azerbaijan and allow ANS to start rebroadcasting. We were convinced that a solution could be found if good will was shown on both sides, ANS and the NTRC, in the light also of the personal interest that the President of the State had shown in this case. Whether the solution would be found through a decision by the courts or the winning by ANS of the new tender announced for the frequency it previously used was of minor importance for us provided that ANS could go back on the air.

170. Just hours before issuing our preliminary draft report, on 12 December 2006, we were informed that a decision was taken by the NTRC in line with our appeal: the NTRC permitted ANS to restore its broadcasts so that the "frequencies of the channel would not remain empty until the result of the tender was known". The tender would end on 5 January 2007, and then the applications would be considered by 5 February 2007. After this, the winner of the competition would be announced. ANS started rebroadcasting as of 12 December 2006.

171. We immediately issued a public statement to welcome this positive development which, according to the Chairman of the NTRC, was the result of the President's goodwill and numerous

⁵⁰ The threat of eviction of *Azadliq* had prompted several staff members and the managers of the newspaper to start a hunger strike to denounce pressure on freedom of expression. The strike went on for several weeks and several participants were hospitalised. The hunger strikers received the support of political opposition leaders, parliamentarians, NGOs and high profile public figures. They were also visited by representatives of the international community and foreign journalists.

⁵¹ According to information provided by the authorities in the course of the execution of the court decision all the property belonging to the newspaper, the agency and the party, was safely transported to the new premises assigned to them. The latter have, however, brought complaints before the court for damages suffered during the eviction.

⁵² Licensing must not be, in the words of the European Court of Human Rights, clearly arbitrary or discriminatory. See Application. No. 35591/97, *J. Lévêque v. France*, Decision of 23 November 1999.

appeals from society and human rights activists. We thanked the competent authorities and other participants to this process for showing flexibility. We also thanked Mr Seyidov for the personal efforts we are convinced he made in this context. However, it was clear that this positive development was a temporary measure pending the decision on the new tender which was announced for the ANS frequencies. We therefore urged that a definitive solution should be found to the license issue of ANS.

172. When we learnt that ANS was the only one to apply for the tender we thought we were finally close to a "definitive solution" to the problem. We were thus extremely disappointed to learn, in early February 2007, that a second tendering round had been announced (from 20 February to 20 March 2007) on the ground that no bidders other than ANS had taken part in the earlier tender. The results of the second tendering round will be announced after 20 April 2007. During this period, ANS TV and ANS Radio are allowed to continue broadcasting.

173. We reiterate that when Azerbaijan joined the Council of Europe, it committed itself "to exclude the use of administrative means to restrict the freedom of the media." We therefore hope that this uncertainty regarding ANS' fate will soon come to an end. At the same time, we welcome the fact that the law on radio and television broadcasting has now been sent for an expert review to the Council of Europe so as to avoid similar situations in the future.

174. In another worrying development which we fail to understand, the NTRC has recently announced that it will prohibit the broadcasting of films (feature, documentary and cartoon) in foreign languages on all Azerbaijani TV channels. Sanctions are foreseen for the channels that do not comply with the prohibition and fail to dub all broadcasts. Also, on 17 January 2007, the NTRC informed the Embassies of Turkey and Russia that terrestrial broadcasting of TV channels belonging to these countries will be stopped as from 1 June 2007 in Azerbaijan. On the same day, the Chairman of the NTRC announced that the control over television and radio will be further strengthened in 2007.

175. As regards the broadcasting of BBC and Voice of America⁵³, they have recently been allocated separate frequencies. Thus, according to information provided by the authorities, whereas previously they were on the air only 2 hours a day using the frequencies of *ANS CM*, *Radio Antenn* and *Radio Azerbaijan*, they are now broadcasting round-the-clock. Radio Liberty will soon also be granted a separate frequency.

176. Last but not least, as regards the eviction of *Azadliq*, the newspaper is now functioning in the *Azerbaijan Publishing House*, also situated in the centre of Baku, where most press outlets are located. For us the essential is that the new premises allow the paper to operate normally. We remain puzzled by the manner in which the court's decision on eviction was executed since no explanation was given to us as regards the urgency and the use of special forces.

3.3.3. Freedom of assembly

177. Violations of freedom of assembly in Azerbaijan have been repeatedly and strongly denounced by the Assembly especially prior to or after elections, most recently after the parliamentary elections of November 2005. Unacceptable violations of the freedom of assembly were one of the reasons for which the credentials of the Azerbaijani delegation had been challenged⁵⁴.

178. The Baku Mayor has fixed seven venues where public meetings can be held. However, these places are reportedly situated far away from the centre of the capital which renders the exercise of the right to freedom of assembly meaningless. Representatives of the Presidential Administration told us that this list was not exhaustive. However, the decision to authorise public meetings elsewhere than in the seven venues fixed in advance is at the discretion of the Mayor.

179. During our recent mission opposition parties and pressure groups informed us that their requests to hold public meetings had consistently been denied by the Baku Mayor's Office. Unauthorised meetings were interrupted by the police on several occasions. In the context of the

⁵³ See above paragraph 161.

⁵⁴ See Doc. 10941 on the observation of the parliamentary elections of November 2005; Resolution 1480 (2006) and Doc. 10807 rev. on the challenge of still unratified credentials of the parliamentary delegation of Azerbaijan; see also doc. AS/Mon (2006) 20 and the Report on Freedom of Assembly during the 2005 parliamentary elections, published by the OSCE Office in Baku in August 2006.

eviction of *Azadliq* newspaper on 24 November 2006, 70 persons were arrested of whom 15 were subsequently brought to court and imprisoned. An unauthorised demonstration organised by the *Azadliq* opposition bloc on 26 January 2007 in protest of the price increases led to the arrest of 19 persons.

180. Two demonstrations staged on 28 January and on 18 February 2007 by the Musavat party on the outskirts of Baku, also in protest of the price increases, were authorised by the Mayor. Several hundred persons participated in these demonstrations and no incidents were reported. Minor incidents were, however, reported in the context of other protest actions conducted either in Baku or outside the capital.

181. A report recently published brought to light incidents of disruption of peaceful religious meetings organised by Jehovah's Witnesses in Azerbaijan and the subsequent deportation of attending foreign nationals, in violation of the guarantees of freedom of religion and of assembly enshrined in the Azeri Constitution and the European Convention of Human Rights⁵⁵. Azerbaijan has been known to be a country where there is a high level of religious tolerance and religious harmony. We therefore urge the authorities not to harm this image and take measures to prevent illegal interference from the police authorities with the peaceful exercise of the freedom of religion and freedom of assembly of religious minorities such as the Jehovah's Witnesses. The authorities should also prevent the deportation or arrest of foreign citizens peacefully assembling for religious meetings or legally representing religious minorities and rescind the deportation orders against six foreign nationals deported in December 2006 and January 2007.

182. In its Resolution 1505 of June 2006, the Assembly urged the Azerbaijani authorities to amend without delay the law on freedom of assembly. It also reiterated that in the absence of any amendments, the law on freedom of assembly of 1998 continued to give disproportionate discretion to local executive authorities in accepting or not requests for holding rallies and deciding on their venues.

183. We therefore welcome the fact that the authorities of Azerbaijan have shown the political will to amend the relevant legislation and have requested the assistance of the Venice Commission.

184. In its Opinion, adopted on 14 October 2006, the Venice Commission concluded that the law set with excessive details the conditions for exercising the guaranteed right of assembly, especially where its exercise would pose no threat to public order and where necessity does not in fact demand state intervention. The relevant legislation should focus on what is forbidden rather than on what is allowed: it should be made clear that all that is not forbidden is permissible, and not vice-versa.

185. The Venice Commission identified certain substantial shortcomings in the law which do not properly respect the principle of proportionality. The law provides for numerous cases of automatic prohibition on holding an assembly. The proportionality and necessity test should be more consistently reflected in the law so as to ensure, on a case by case basis that the restriction – including the use of force – is justified within the meaning of Article 11 (2) ECHR.

186. A working meeting was organised in Strasbourg on 6 December 2006 between representatives of the Presidential Administration and experts of the Venice Commission, with the participation of the OSCE Office in Baku, to discuss the conclusions and recommendations made in the Opinion. On the basis of the latter, the Azerbaijani side is now preparing draft amendments to the 1998 law which will subsequently be submitted to the Venice Commission.

187. We urge the Azerbaijani authorities to amend the 1998 law on freedom of assembly in line with the recommendations made by the Venice Commission. It is also important that improvements in

⁵⁵ See Human Rights Violations against Jehovah's Witnesses in Azerbaijan, February 2007. According to the report, there are over 500 Jehovah's Witnesses in Azerbaijan who, after suffering decades of religious persecution under the former Soviet Union, were glad to be legally registered by the government of Azerbaijan on 22 December 1999. Their religious organisation was re-registered on 7 February 2002. In the most recent incident, on Sunday, 24 December 2006, police raided a religious service of Jehovah's Witnesses and arrested approximately 200 persons. Equipment, literature, and other property were confiscated. Six foreign nationals, who were in the building at the time of the raid were arrested and held in detention for several weeks without legal representation. All six were in the country legally but were subsequently deported.

the text of the law be coupled with progress made in its implementation, which may justify awareness-raising measures and adequate training for the competent authorities. The way in which the law is interpreted and applied is of great significance in terms of its compliance. We therefore welcome training offered in this respect by the OSCE Office in Baku. Pending a revision of the law, we urge the authorities to ensure respect for the guarantees of Article 11 ECHR, as interpreted by the European Court of Human Rights, in applying the existing law and forbid violations of freedom of assembly and excessive use of force by law enforcement agents.

3.3.4. Prison reform, detention conditions and allegations of ill-treatment

188. The total number of inmates in Azerbaijan is between 17 000 and 18 000 people, of which 10% are in pre-trial detention. Prison conditions remain harsh despite continuing infrastructure improvements⁵⁶. In most detention facilities for convicts, inmates live in dormitories accommodating 50 to 60 people and can move around. The only exception is the high security prison in Gobustan, located approximately 45 minutes from Baku, which is to date the only prison in the country for convicts serving life sentences⁵⁷. In Gobustan most inmates⁵⁸ are kept 23 hours a day in cells accommodating 2, 4, 6 or 10 prisoners. They are neither provided with the opportunity to work or any other activity. Gobustan prison's capacity is 650 but there are currently 700 inmates. The situation of prisoners in Gobustan raised further concerns following the suicide, on 17 February 2007, of yet another prisoner bringing the number of prisoners who committed suicide in that prison to four within the last twelve months.

189. A report published on 29 January 2007 by the International Federation of Human Rights and the Human Rights Centre of Azerbaijan⁵⁹ brought to light the specific problem of the persons who were convicted to death prior to the abolition of the death penalty in Azerbaijan in 1998 and whose sentences were then commuted to life imprisonment, although the Criminal Code in force at that moment did not provide for life imprisonment (but for a maximum of 15-year imprisonment). The new Criminal Code of 2000 provided as a maximum sentence 15 to 20 year-imprisonment. We urge the authorities to study this report and ensure a case-by-case review of life sentences which were the result of the abolition of the death penalty; the prisoners concerned who are still serving life sentences in the Gobustan prison should in particular benefit from the retroactive application of the most favourable criminal law provisions adopted in 2000.

190. There are projects to build mixed regime prisons in Lenkaran, Cheki and Nakhichevan. It is also planned to build a new wing in Gobustan and to rehabilitate some of the existing buildings. An ambitious programme of prison reform is on-going directed by the Ministry of Justice of Azerbaijan with Council of Europe and European Commission assistance. An Action Plan for 2006-2007, drawn up as part of a Joint CoE/EC Programme, provides for a number of activities aiming at: enhancing legal reform by bringing laws and regulations governing the pre-trial regime and the prison system into compliance with European standards; improving the management of the Prison Service and prison establishments through an efficient use of financial and human resources, supporting the Prison Training centre in order to improve the professional skills of prison staff and the protection of human rights; improving policies and practices for prisoners' resettlement. Both the Council of Europe and the Ministry of Justice of Azerbaijan are satisfied with the implementation of the Action Plan.

191. Access to prisons has been granted to the Ombudsperson, local and international non-governmental organisations and human rights defenders. By an order of the Minister of Justice dated 25 April 2006 regulations on public participation and supervision over the prison system have been approved and a Public Committee to secure their implementation has been established. We welcome these recent positive developments.

⁵⁶ See also the Human Rights Watch 2006 Annual report on Azerbaijan; the US State Department Report on Human Rights Practices in Azerbaijan – 2006; the report published in January 2007 by the International Federation of Human Rights and the Human Rights Centre of Azerbaijan on "*Après l'abolition de la peine capitale, les condamnés à perpétuité en danger de mort. Torture et mauvais traitements dans les prisons d'Azerbaïdjan*".

⁵⁷ A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out an ad hoc visit to Azerbaijan to examine the situation at Gobustan Prison in May 2005.

⁵⁸ The exception being around 50 convicts who constitute the so-called «domestic brigade».

⁵⁹ See reference in footnote 56.

192. However, improvements in the prison system cannot provide satisfactory answers to most cases of reported ill-treatment and allegations of torture carried out by law-enforcement agents during police custody or pre-trial investigation as well as in the army.

193. Persistent allegations of ill-treatment harm the image of the country especially as long as they are not appropriately investigated and sanctioned. There is a high perception of impunity. According to the Ministry of the Interior, a total of nine cases of ill-treatment by police were sent to the courts in 2005 and in 330 cases, police officers were reprimanded, dismissed or otherwise administratively dealt with. This is clearly not enough to have any deterrent effect.

194. The Prosecutor General informed us of a special order he signed for cases of alleged torture carried out by law enforcement agents. We urge the authorities to act energetically to prove that they do not tolerate torture or ill-treatment within public institutions and their own army.

195. We submitted to the authorities three cases of death in the army which were allegedly the result of torture: *Aliyev Faig Giyas oglu*, died on 4 November 2005 at the age of 23; *Nasibov Orkhan Adil oglu*, died on 21 June 2006 at the age of 19; *Safarov Tahir Fazail oglu*, died on 24 October 2006 at the age of 26. We urged the authorities to conduct or re-open investigation on these cases and inform us accordingly of the outcome.

196. The following information was provided by the Azerbaijani authorities concerning these three cases:

– On 4 November 2005 criminal proceedings were initiated following the death (reported as suicide) of *Aliyev Faig Giyas oglu*. As a result of the investigation, the commander of the military unit was found guilty and convicted under Article 331.2 of the Criminal Code (insult or torture of a serviceman). Faig Aliyev's father appealed against this judgment, asking that the behaviour of the offender be qualified as a more serious crime. The Appeal Court dismissed his appeal. Following an appeal by the Prosecutor General of Azerbaijan against this judgment, the latter has been revoked and the case has been sent back to the Appeal Court for re-trial.

– As concerns the case of *Nasibov Orkhan Adil oglu*, the preliminary findings based on a forensic examination and questioning of witnesses lead to the conclusion that the cause of his death was sunstroke and that he had not been subjected to any ill-treatment. Another forensic expertise has been assigned to establish *inter alia* the conditions in which the victim got sunstroke and the reasons why no medical treatment was provided to him in due time. The forensic opinion is pending and the criminal investigation is under way.

– As regards *Safarov Tahir Fazail oglu*, the criminal investigation of his case is on-going.

197. Also, we are very concerned about the case of three minors who were arrested on 14 March 2005: Ruslan Bessonov (born on 22 April 1988, arrested at the age of 17), Makim Genashkin (born on 15 March 1990, arrested at the age of 15) and Dmitri Pavlov (born 16 July 1989, arrested at the age of 16). They were allegedly subjected to severe beatings by police and prosecutor's officials, suffocation, denial of food, water and supply, threats of rape and threats against their family members. Reportedly, compelled under torture, the three boys signed confessions and incriminating statements against one another for participation in the murder of another boy which they all maintain none of them committed. After several postponements, their trial resumed on 15 September 2006. We urged the authorities to investigate the allegations of ill-treatment against the three boys and inform us accordingly.

198. In their comments, the Azerbaijani authorities refute the above-mentioned allegations of ill-treatment of the three boys. They argue that during their police custody they were questioned in the presence of their lawyers, parents and interpreter. The forensic examination ordered by the investigative authorities found no injuries on the bodies of the accused. A special inquiry carried out by the Office of the Prosecutor General also concluded that none of the three defendants had been subjected to torture or other ill-treatment and that they had pleaded guilty without any pressure. The trial was postponed because one of the defendants (Dmitri Pavlov) had been hospitalised and the defence lawyer of another defendant (Ruslan Bessonov) was ill. At present, the trial is on-going.

199. We hope that the criminal trial of the three boys will comply with fair trial standards and proceed as swiftly as possible without additional delays⁶⁰.

200. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has carried out four visits to Azerbaijan⁶¹. The most recent visit took place mid-November 2006. Regrettably the government of Azerbaijan has not yet authorised the publication of CPT reports on its visits in 2004 and 2005. We urge the authorities to make public these reports and implement their recommendations.

3.3.5. Alternative service and conscientious objectors

201. The establishment of an alternative civilian service is one of the obligations undertaken by Azerbaijan when it joined the Council of Europe in 2001. Azerbaijan undertook to create a legal framework for alternative civilian service by January 2004, yet to date no such law has been adopted.

202. Through a constitutional amendment introduced in August 2002 the Azerbaijani Constitution provides for the option of alternative civilian service (Article 76) for all those whose convictions do not permit them to undertake military service.

203. In spite of this constitutional amendment, however, the Azerbaijani courts have a record of ruling in favour of the military authorities in cases of conscientious objection. In February 2005 Azerbaijan's Supreme Court ruled against the right of a Jehovah's Witness, Mahir Bagirov⁶², to conscientious objection notably by advancing a definition of the legal term 'minister of religion' taking in only recognized religions or trainee priests in recognized seminaries. This definition would effectively exclude all members of non-traditional religions in Azerbaijan, who are nonetheless entitled to the right of conscientious objection.

204. Mushviq Mammedov, another Jehovah's Witness, was arrested on charges of evading the draft for military service on 28 April 2006 and convicted on 26 July to a six-month suspended prison sentence.

205. The uncertain geopolitical environment facing Azerbaijan, which obliges it to take all necessary security measures, should not hold up the adoption of a law on alternative service in line with the accession commitment. We therefore welcome the fact that work on a draft law on alternative service has started. Council of Europe experts' opinion on the draft has been transmitted to the authorities of Azerbaijan on 23 October 2006. The Azerbaijani authorities are currently studying the opinion and will take it into consideration when drafting the final version of the law.

3.3.6. Minorities

206. Azerbaijan is home to many national minorities living peacefully together for centuries.

207. In its Opinion on Azerbaijan⁶³, adopted in May 2003, the Advisory Committee on the Framework Convention of National Minorities considered that Azerbaijan had made particularly commendable efforts in opening up the personal scope of application of the Convention to a wide range of minorities. The Advisory Committee welcomed overall the fact that the importance of the protection and promotion of cultures of national minorities was recognised and that the long history of cultural diversity of the country was largely valued in Azerbaijan.

⁶⁰ See also Amnesty International's statement on this case: "*Two years of ill-treatment must end for Azerbaijani teenagers!*", published on 14 March 2007; AI Index: EUR 55/007/2007.

⁶¹ In its report published in December 2004, concerning a visit that took place in 2002, the CPT concluded that people detained by the police in Azerbaijan run a significant risk of being ill-treated. The Committee recommended that a high priority be given to professional training for police officers and that the legal safeguards against ill-treatment (such as notification of custody, access to a lawyer and access to a doctor) are applied as from the very outset of deprivation of liberty.

⁶² Mahir Bagirov has lodged an application to the European Court of Human Rights, which in recent judgments on this issue has upheld complaints of conscientious objectors (for instance in the case of conscientious objector Osman Murat Ulke v. Turkey in January 2006).

⁶³ See Doc. ACFC/INF/OPI(2004)001. See also the Resolution adopted by the Committee of Ministers on 13 July 2004, Res CMN(2004)8.

208. At the same time, the Advisory Committee enumerated a number of shortcomings in the legislation pertaining to the implementation of the Convention and recommended certain measures that needed to be taken.

209. During our recent mission to the country, we had the opportunity to witness this cultural diversity in a meeting with representatives of numerous minorities in the region of Quba.

210. Some 200 000 Lezghis live in Azerbaijan. The representatives of this minority told us that their language was taught in elementary schools and textbooks were provided by the state. There are newspapers and TV Programmes in their language as well as a Lezghi theatre.

211. Approximately 2 000 Khinalugs live in the region of Quba in a mountain village called Khinalys at 2,300 metres altitude. The Khinalugs are Muslims (Sunnite). The Khinalug language is connected with one of the most archaic languages in the Caucasus, which has preserved its original form from the time of the Caucasian Albanian state (from the 3rd century BC to the 3rd century AD). The representative of this minority told us that there was an elementary and a secondary school in which the Khinalug language was taught, a Khinalug cultural association, including a theatre, as well as a newspaper issued once per month in the Khinalug language. Totally isolated during the Soviet period, a highway now assures access to their village. It is essential that the Khinalugs, as well as the Kryz, another small people living in remote villages in the same region, be given the possibilities to continue to develop their language, their only ethnic distinctive feature, and thus continue to exist⁶⁴.

212. Azerbaijan is home to some 70 000 Tats, of whom 17 000 live in Quba. Their language is taught two hours per week in school and they are represented in all local administrative bodies.

213. Mountain Jews have been living in Quba in the so-called "Red Town" for some 300 years and in the region for more than 2 000 years. In two schools in the Red Town three languages are taught: Azeri, Russian and Hebrew. Out of 200 000 mountain Jews in the whole world, 30 000 live in Azerbaijan of whom about 4,500 live in the Red Town in Quba.

214. Representatives of civil society we met in Quba mentioned the following major issues of concern: lack of an independent judiciary in the regions and of enforcement of court decisions; violations of the freedom of assembly; farmers are not receiving credits so that they are forced to sell their land at low prices; corruption and unemployment.

215. Regional media representatives told us that they faced problems of financial sustainability. A private regional TV, Qutb-TV, suffers from unfair competition by national TV channels. The latter ignore the limit on the hours of advertising permitted which acts to deter advertisers from using the regional media. They wanted to open a local radio station but had received no licence from the National Television and Radio Council.

216. The recent arrest and subsequent charge with "high treason" (for alleged links with Iran) of Mr Novruzali Mammadov, a prominent member of the Talysh ethnic minority, on 2 February 2007, has given rise to concerns within this minority group. According to official statistics, some 80 000 Talysh live in the southern Azerbaijani regions of Lenkoran and Massaly, along the border with Iran (where some 100 000 Talysh live). The Talysh language belongs to the Iranian group of Indo-European languages⁶⁵. Mr Mammadov is the Chairman of the Talysh Cultural Centre, Head of the Academy of Sciences of Azerbaijan's Institute of Philology and editor-in-chief of a newspaper published in the Talysh language ("*Tolishi Sedo*" which means "Voice of Talish"). On 16 February 2007, the secretary of the same newspaper, Mr Elman Quliyev, was also arrested. An investigation against the two men is on-going.

217. We urge the authorities to implement the recommendations made by the Advisory Committee on the Framework Convention of National Minorities and in particular to adopt a law on national minorities in line with their accession commitment. We also urge them to ratify the European Charter

⁶⁴ For a description of the Khinalugs and the Kryz peoples, as well as other ethnic minorities living in Azerbaijan, see the Red Book of the Peoples of the Russian Empire, www.eki.ee.

⁶⁵ The rapporteurs had met with Talysh intellectuals in Lenkoran in December 2004 and during the November 2005 elections who had told them that it was more and more difficult to learn the Talysh language in Lenkoran University.

for Regional or Minority Languages as soon as possible noting that Azerbaijan had committed to do so within one year of its accession to the Council of Europe.

4. The Nagorno-Karabakh conflict

218. Upon acceding to the Council of Europe, Azerbaijan entered into the following commitments with regard to the conflict in Nagorno-Karabakh:

"a. to continue efforts to settle this conflict by peaceful means only;

b. to settle international and domestic disputes by peaceful means and according to the principles of international law (an obligation incumbent on all Council of Europe member states), resolutely rejecting any threatened use of force against its neighbours." (Opinion No. 222, para. 14.ii.).

219. As was said above, the settlement of the Nagorno-Karabakh conflict is the top priority of the Azerbaijani foreign policy. The absence of a definitive solution is also the greatest obstacle to peace and stability in the region as a whole. Over a decade has elapsed since the start of the hostilities and the subsequent ceasefire, but the parties have still not succeeded in reaching an agreement on tangible measures that might lead to a lasting peace and the return of the hundreds of thousands of displaced persons (some 760 000 persons from the Azerbaijani side)⁶⁶.

220. During our last mission to the country, we discussed this issue with the President and the Foreign Minister and reiterated our full support to a solution which would be acceptable to both sides and allow Azerbaijan to restore its territorial integrity. We also received information about missing persons from the Ministry of National Security and the State Commission on Missing Persons⁶⁷.

221. Most recently, the last meeting between the Presidents of Azerbaijan and Armenia in Minsk on 28 November 2006 on the fringes of the CIS Summit, raised hopes that progress was finally being achieved towards an agreement on the basic principles of the settlement⁶⁸.

222. President Aliyev said upon his return to Baku that he had approached with his Armenian homologue "the final stage of the negotiations". He also stated that the territorial unity of Azerbaijan should be restored while Nagorno-Karabakh would gain "the highest level of autonomy inside Azerbaijan's borders". President Aliyev said that the sides had drawn their final versions and the future of negotiations much depended on their future steps. According to him, the negotiations passed in a constructive environment. Some days later, during an OSCE Ministerial Conference, a statement was issued recognising progress towards an agreement on the basic principles. We welcome the constructive position of the President of the Republic of Azerbaijan and urge the parties to continue their negotiations with a view to finding a solution to the conflict. We further urge the parties to refrain from unjustified delays, prolongations or intentional setbacks from the achieved understandings.

223. We reiterate the concern expressed by the Assembly in its Resolution 1416 (2005) that "the military action, and the widespread ethnic hostilities, which preceded it, led to large-scale ethnic expulsion and the creation of mono-ethnic areas, which resemble the terrible concept of ethnic cleansing". We therefore urge the parties to enhance their efforts to build peace and harmony between both communities of the Nagorno-Karabakh region. It is in the interest of both parties to end this conflict as soon as possible, ruling out the use of force, in accordance with the commitments they entered into on joining the Council of Europe.

224. The Parliamentary Assembly, in particular through the Bureau's Ad Hoc Committee "on the implementation of Resolution 1416 (2005) on the conflict over the Nagorno-Karabakh region dealt

⁶⁶ The situation of refugees and displaced persons in Azerbaijan is described in Doc. 10835 which led to the adoption of Resolution 1497 (2006) in April 2006. The report refers to the situation of Azerbaijani refugees and displaced persons who are in that situation because of the Nagorno-Karabakh conflict. It also expresses concerns about the situation of Chechen refugees in Azerbaijan, the largest community of foreign refugees in the country.

⁶⁷ Mr Leo Platvoet, the rapporteur on missing persons in Armenia, Azerbaijan and Georgia of the Committee on Migration, Refugees and Population, visited the Nagorno-Karabakh region, among others, in June 2006 and has prepared a report (Doc. 11196) for debate in the Standing Committee in Belgrade on 24 May 2007.

⁶⁸ See also above, section 1.2.

with by the OSCE Minsk Conference", of which we are members together with the Chairmen of the two parliamentary delegations concerned and the Rapporteurs on Armenia's monitoring, could help foster a positive negotiating climate. It could in particular foster dialogue at the parliamentary level and between the populations of the two countries concerned, and also with the population of Nagorno-Karabakh, including both the Armenian and Azerbaijani communities, while refraining from interfering in the negotiating process.

225. The Ad Hoc Committee held an exchange of views with the delegations of Armenia and Azerbaijan on 25 January 2007. In the light of the discussions, the Committee decided to visit the two countries, including the Nagorno-Karabakh region, after the parliamentary elections of May 2007 in Armenia.

226. As pointed out in the report by the Chair of the ad hoc committee, Lord Russell Johnston⁶⁹, nothing has been done to prepare the populations of the two countries for the possibility of a compromise. None of the communities seems ready to make concessions or to accept the measures currently being negotiated by the two foreign ministers.

227. In this context, we welcome and further encourage contacts which have recently been established between Azerbaijani and Armenian civil society groups. They have also been encouraged by the Foreign Minister of Azerbaijan. We regret that other politicians in both countries have criticised them.

⁶⁹ See doc. AS/Bur/NK (2005) 02 rev. 2.

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

Reference to committee: Resolution 1115 (1997)

Draft resolution adopted unanimously by the committee on 28 March 2007

Members of the committee: Mr Eduard **Lintner** (Chairperson), Mrs Hanne **Severinsen** (1st Vice-Chairperson), Mr Mikko Elo (2nd Vice-Chairperson), Mr Tigran Torosyan (3rd Vice-Chairperson), Mr Aydin **Abbasov**, Mr Pedro **Agramunt**, Mr Birgir Ármannsson, Mr Jaume Bartumeu Cassany, Mrs Meritxell Batet Lamaña, Mr József **Berényi**, Mr Aleksandër Biberaj, Mrs Gülsün **Bilgehan**, Mrs Mimount Bousakla, Mr Luc Van den Brande, Mr Patrick **Breen**, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise Christoffersen, Mr Boriss **Cilevičs**, Mr Georges Colombier, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mr John Dupraz, Mrs Josette Durrieu, Mr Mátyás **Eörsi**, Mr Per-Kristian Foss, Mr György **Frunda**, Mrs Urszula **Gacek**, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel **Glesener**, Mr Charles **Goerens**, Mr Stef **Goris**, Mr Andreas **Gross**, Mr Michael Hagberg, Ms Gultakin **Hajiyeva**, Mr Michael Hancock, Mr Andres **Herkel**, Mr Serhiy **Holovaty**, Mrs Iliana Iotava, Mr Kastriot Islami, Mr Erik **Jurgens**, Mr Ali Rashid Khalil, Mr Konstantin **Kosachev**, Mr Andros Kyprianou, Mrs Darja Lavtižar-Bebler, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony Lloyd, Mr Mikhail Margelov, Mr Bernard **Marquet**, Mr Frano Matušić, Mr Miloš **Melčák**, Mrs Assunta Meloni, Mrs Nadezhda Mikhailova, Mr Neven **Mimica**, Mr Paschal Mooney, Mr João Bosco Mota Amaral, Mr Zsolt Németh, Mr İbrahim Özal, Mr Theodoros Pangalos, Mr Leo **Platvoet**, Ms Maria Postoico, Mr Christos Pourgourides, Mr Dario **Rivolta**, Mr Armen Rustamyan, Mrs Katrin Saks, Mr Oliver Sambevski, Mr Kimmo Sasi, Mr Samad **Seyidov**, Mr Vitaliy Shybko, Mr Leonid **Slutsky**, Mrs Elene **Tevdoradze**, Mr Egidijus **Vareikis**, Mr Miltiadis Varvitsiotis, Mr José Vera Jardim, Mrs Birutė Vésaitė, Mr Oldřich Vojříř, Mr David **Wilshire**, Mr Tadeusz Wita, Mrs Renate **Wohlwend**, Mr Andrej **Zernovski**, Mr Emanuelis **Zingeris**.

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the committee: Mrs Ravaud, Mrs Chatzivassiliou, Mrs Odrats