Resolution 2062 (2015)

The functioning of democratic institutions in Azerbaijan

Parliamentary Assembly

1. The Parliamentary Assembly acknowledges the complex geopolitical context of Azerbaijan as it tries to balance its relations with the European Union, Turkey, Iran and its other Caspian Sea neighbours, the Russian Federation and the United States. Azerbaijan has managed to maintain an independent and diversified foreign policy position, in particular due to its sizeable energy resources and strategic location on the Caspian Sea. The Assembly is fully aware of the Nagorno-Karabakh conflict, which dominates to a large extent the Azerbaijani foreign policy agenda.

2. The Assembly takes note of the authorities’ concerns over the security and the stability of the country due to alleged threats from abroad, in particular the alleged risks to Azerbaijan from the situation in some other European countries. In this context, Azerbaijan is a particularly important country with its energy resources playing a pivotal role, particularly as the European Union is seeking to diversify away from Russian energy supplies. This has considerably strengthened Baku's strategic position in recent months.

3. It notes that the Azerbaijani institutional structure grants particularly strong powers to the President of the Republic and the executive. In addition to the limited competence of the Milli Mejlis under the constitution, the Assembly draws attention to the fact that not all opposition forces are represented in parliament, which is detrimental to true political dialogue and effective parliamentary oversight. This is mainly due to the electoral system, which is a one-round majoritarian system, similar to that of the United Kingdom, which favours both the ruling party and independent candidates. Moreover, as the opposition in Azerbaijan is very divided and opposition candidates are often competing against each other, they weaken each other. The Assembly is therefore convinced that it is in the best interests of the democratic process and the ruling party itself to confront opposition parties in a representative body, and calls on the authorities to develop an environment favourable to political pluralism and increased parliamentary control over the executive in order to guarantee checks and balances.

4. In November 2015, Azerbaijan will hold parliamentary elections. The Assembly regrets that some of the most important recommendations of the European Commission for Democracy through Law (Venice Commission), particularly those regarding the composition of the electoral commissions and candidate registration, have not been addressed. It recalls that the authorities responsible for the administration of elections should function in a transparent manner and maintain impartiality and independence. Effective remedies are essential to ensure trust in the electoral process. During the 2013 presidential election in Azerbaijan, the election observation delegations of the Parliamentary Assembly of the Council of Europe and the European Parliament observed a free, fair and transparent electoral process overall around election day, improvements being still desirable with regard to the electoral framework. The Assembly, however, calls on the Azerbaijani authorities to take the necessary measures to avoid the shortcomings highlighted during previous elections, such as the adoption of court decisions that were not fully reasoned and had no legal basis and the lack of true judicial supervision. The Assembly recognises the important contribution that it has made in promoting democracy in Azerbaijan through election observation missions. The Assembly believes that it is
as important as ever to continue carrying out its monitoring work. In the event of the inability of other observation teams to participate, the Assembly should consider increasing the Council of Europe’s contribution for the forthcoming parliamentary elections to ensure effective scrutiny of the election process.

5. The Assembly recalls that the independence of the judiciary is one of the basic preconditions of the separation of powers and of the system of checks and balances. It welcomes the recent legal amendments with regard to the judiciary, and in particular the new rule stipulating that judges of the Supreme Court must retire at the age of 68 and judges of all other courts at the age of 66, and the removal of the former regulation allowing the extension of judicial tenure for some judges up to the age of 70. It nevertheless encourages the authorities to further ensure full independence of the judiciary and, in particular, to prevent influence and interference by the executive branch. The Judicial Legal Council should be composed either exclusively of judges, or of at least a substantial majority of judges elected by their peers. It is recommended that the role of the Judicial Legal Council in the appointment of all categories of judges and court chairpersons be further increased. Similarly, while acknowledging the recent legal amendments reducing the length of the probationary period for judges from five to three years, the Assembly recalls that the Venice Commission has constantly opposed probationary periods for judges and only tolerates them under strict conditions.

6. Despite these efforts, the lack of independence of the judiciary remains a concern in Azerbaijan, where the executive branch is alleged to continue to exert undue influence. Dubiously motivated criminal prosecutions and disproportionate sentences remain a concern. Fairness of trials, equality of arms and respect for the presumption of innocence are other major concerns. The Assembly is concerned about the use of pre-trial detention as a means of punishing individuals for criticising the government, as stated by the European Court of Human Rights in its judgment in the case of Ilgar Mammadov v. Azerbaijan, in which it found a violation of Article 18 of the European Convention on Human Rights (ETS No. 5, “the Convention”).

7. A slight decrease in the levels of corruption has been noted as a result of several important reforms and national and international state programmes. The Assembly welcomes the reduction of the level of corruption, especially due to daily services provided by the network of public service halls known as ASAN centres. While supporting the country’s efforts to promote transparency and fight corruption, the financing of terrorism and money laundering, the Assembly urges the authorities to create a good balance between the rights of association and freedom of expression, as guaranteed by the Convention, and the State’s legitimate fight against organised crime.

8. In the light of the above, the Assembly calls on the authorities to review the law on non-governmental organisations (NGOs) with a view to addressing the concerns formulated by the Venice Commission and creating an environment conducive to the work of civil society. It is indeed worrying that the shortcomings in the country’s NGO legislation have negatively affected NGOs’ ability to operate. The strict control of NGOs by State authorities is likely to interfere with the right to freedom of association guaranteed by Article 11 of the Convention. In this regard, the Assembly condemns the crackdown on human rights in Azerbaijan where working conditions for NGOs and human rights defenders have significantly deteriorated and some prominent and recognised human rights defenders, civil society activists and journalists are behind bars. The Assembly calls on the Azerbaijani authorities to ensure objective trials of the cases of these detained people. At the same time, the Assembly takes note of the adoption of the Law on Public Participation, which establishes public control over central and local executive powers and local self-governing bodies, thus ensuring the participation of civil society institutions in decision-making processes.

9. The Assembly is deeply concerned about the increasing number of reprisals against independent media and advocates of freedom of expression in Azerbaijan. In this regard, it deplors the arbitrary application of criminal legislation to limit freedom of expression, in particular the reported recent use of different criminal laws against journalists and bloggers, and recommends taking the measures necessary to ensure a genuinely independent and impartial review by the judiciary of cases involving journalists and others expressing critical opinions.

10. The Assembly is alarmed by reports by human rights defenders and international NGOs, confirmed by the Council of Europe Commissioner for Human Rights, concerning the increase in criminal prosecutions against NGO leaders, journalists, lawyers and others who express critical opinions, based on alleged charges in relation to their work, especially human rights lawyer Intigam Aliyev; Anar Mammadli, the head of an election monitoring group; veteran activist Leyla Yunus and her husband Arif Yunus; Rasul Jafarov, founder of the “Sports for Rights” campaign; and journalists Khadija Ismayilova and Rauf Mirgadirov. The Assembly calls on the authorities to end the systemic harassment of those who are critical of the government and to release those wrongfully detained. The Assembly shares the concerns voiced by the Commissioner for Human Rights on the judicial system. The Assembly welcomes the resumption of the activities of a Joint Working Group on
11. Taking these concerns and developments into account, the Assembly calls on the Azerbaijani authorities to:

11.1. put an end to systemic repression of human rights defenders, the media and those critical of the government, including politically motivated prosecutions; allow for effective judicial review of such attempts; and ensure that the overall climate can become conducive to political pluralism ahead of the forthcoming elections in November 2015;

11.2. fully implement the judgments of the European Court of Human Rights, in conformity with the resolutions of the Committee of Ministers;

11.3. with regard to checks and balances, reinforce the effective application of the constitutionally guaranteed principle of the separation of powers, and in particular:

11.3.1. strengthen parliamentary control over the executive;

11.3.2. ensure full independence of the judiciary, especially with regard to the executive;

11.4. with regard to elections:

11.4.1. speed up the implementation of the outstanding recommendations of the Venice Commission and the decisions of the Committee of Ministers on the execution of the judgments by the European Court of Human Rights in the Namat Aliyev group of judgments, in time for the forthcoming elections, and in particular:

11.4.1.1. take the necessary measures to resolve the problems revealed by the Court’s judgments as regards the independence, transparency and legal quality of procedures before the electoral commissions;

11.4.1.2. further improve the system of monitoring the conformity of the elections in order to prevent any arbitrariness and allow for effective judicial supervision over the procedures;

11.4.1.3. continue the reforms of the composition of the electoral administration and registration of both candidates and voters on electoral lists, based on the recommendations of the Venice Commission and of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR);

11.4.1.4. finalise the ongoing reforms concerning party financing and in particular the financing of election campaigns, in line with the recommendations of the Group of States against Corruption (GRECO);

11.4.1.5. ensure that candidates are only required to notify executive authorities of their intent to hold a gathering;

11.4.1.6. make use of the Venice Commission’s expertise in this field;

11.4.1.7. take note of the need for the clear assignment of responsibilities and also the problematic practice of voter registration on electoral registers on election day;

11.4.2. encourage a climate favourable to pluralism, free campaigning and freedom of the media for the November 2015 elections;

11.5. with regard to the judiciary:

11.5.1. ensure independence of the judiciary and judges, and prevent any pressure being exerted on them;

11.5.2. further amend the legislation on the composition and powers of the Judicial Legal Council and the appointment of judges with a view to decreasing the influence of the executive, and in particular:

11.5.2.1. further ensuring that the Judicial Legal Council is composed either exclusively of judges or of a substantial majority of judges elected by their peers, giving more powers to the General Assembly of Judges;
11.5.2.2. consider removing the probation period for judges, or at least further decreasing its length based on objective, pre-established criteria;

11.5.3. take the necessary measures to avoid criminal proceedings being instituted without a legitimate basis and to ensure effective judicial review of such attempts by the Prosecutor’s Office, as well to prevent violations of the presumption of innocence by the law-enforcement authorities and members of the government;

11.5.4. take all necessary measures to guarantee due process and impartiality of the courts, in compliance with Article 6 of the Convention;

11.5.5. take the necessary measures to ensure that pre-trial detention is not imposed without considering whether it is necessary and proportionate, or whether less intrusive measures could be applied;

11.5.6. use all available legal tools to release those prisoners whose detention gives rise to justified doubts and concerns;

11.5.7. refrain from exerting any pressure on lawyers defending NGO representatives and journalists;

11.5.8. ensure that the Ombudsman is legally independent and provided with professional immunity guarantees and also has the competence to review issues relating to human rights and the media;

11.6. with regard to freedom of expression:

11.6.1. create proper conditions for journalists to carry out their work and refrain from exerting any kind of pressure on them;

11.6.2. stop reprisals against journalists and others who express critical opinions;

11.6.3. refrain from limiting freedom of expression and freedom of the media in both legislation and in practice;

11.6.4. speed up efforts towards the decriminalisation of defamation, in co-operation with the Venice Commission, to ensure that defamation cannot be associated with excessively high criminal sanctions, including imprisonment; in the meantime, use the existing legislation with caution to avoid prison sentences for such offences;

11.6.5. release all political prisoners, including those who have co-operated with the Parliamentary Assembly;

11.7. with regard to freedom of association:

11.7.1. review the law on NGOs with a view to addressing the concerns formulated by the Venice Commission;

11.7.2. create an environment conducive for NGOs to carry out their legitimate activities including those expressing critical opinions;

11.8. with regard to international co-operation:

11.8.1. reverse the authority’s decision on the closure of the OSCE office in Baku and co-operate fully with this organisation.

12. The Assembly resolves to closely follow the situation in Azerbaijan and to take stock of the progress achieved in the implementation of this and previous resolutions.