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## Parliamentary Assembly Assemblée parlementaire

Provisional edition

### The functioning of democratic institutions in Azerbaijan

Resolution 1750 (2010)<sup>1</sup>

1. When joining the Council of Europe in January 2001, Azerbaijan opted for European standards with respect to democracy, rule of law and human rights. The Parliamentary Assembly has been following closely the developments in the country. As a result of intensive cooperation between the Assembly and the Azerbaijani delegation, six reports have been adopted by the Assembly since the country's accession, two on the monitoring procedure and four on the functioning of democratic institutions in the country. The Assembly firmly believes that the Council of Europe has a crucial role to play in assisting the country in its efforts to bring about democratisation.

2. In November 2010, Azerbaijan will be holding its second parliamentary elections since the country's accession to the Council of Europe. The Assembly attaches great importance to the establishment of the conditions which would enable these elections to comply fully with European standards and be considered as free and fair.

3. Referring to the report of the Ad hoc Committee on the observation of the 2008 presidential election and to the report of the Congress of Local and Regional Authorities on the 2009 Municipal elections, the Assembly notes that progress has been made, particularly during the last presidential election in 2008, in meeting European standards. It regrets, however, that none of these elections has fully complied with democratic requirements.

4. Since the country's accession to the Council of Europe, the parliament of Azerbaijan has reinforced its position vis-à-vis other state institutions. However, much remains to be done to further strengthen parliamentary control over the executive and improve checks and balances in a state with a strong presidential system. The forthcoming parliamentary elections are particularly important in a country in which it is still necessary to reinforce the application in practice of the constitutionally guaranteed principle of the separation of powers and, especially, to strengthen the parliament's role vis-à-vis the executive.

5. Several months ahead of the tenth anniversary of Azerbaijan's membership in the Council of Europe, the Assembly considers that the democratic credibility of the country is again at stake. Despite progress being made during the 2008 presidential election, some systemic shortcomings, including the lack of competitiveness and genuine political pluralism, need to be redressed.

6. Even when the European Commission for Democracy through Law (Venice Commission) in its Opinion concluded that improvement was made because several amendments were adopted, the Electoral Code remains complex, especially with regard to the provisions on the registration of candidates, campaign financing, lists of persons entitled to conduct pre-election campaigns and limitations on the content of election campaign material. The Assembly also agrees with the Venice Commission that the composition of the Central Electoral Commission and territorial commissions, as well as the complaints and appeals procedure still need to be addressed.

7. The Assembly recalls the recent judgment of the European Court of Human Rights in the case of *Namat Aliyev v. Azerbaijan*, concluding that the actions of the electoral commissions and courts concerned, had resulted in the violation of the

applicant's right to stand freely and effectively for election in his constituency.

8. The period since the previous parliamentary elections has been marked by a further weakening of the opposition both within and outside the parliament. This has resulted in the scarcity of opposition candidates which is damaging the democratic process of the country.

9. The Assembly takes note of the 2009 Constitutional amendments, and whilst welcoming some positive innovations, at the same time regrets that there was no prior request to the Venice Commission on the proposed constitutional amendments, some of which are of crucial importance for the functioning of the country's democratic institutions and especially, for the electoral process.

10. Furthermore, as regards the general environment needed to allow the democratic electoral process to develop, the Assembly is concerned about the reported violations of basic freedoms such as the freedom of assembly and the media. It recalls, in this context, the European Parliament resolution on freedom of expression in Azerbaijan of 17 December 2009, voicing concern about the deterioration of media freedom in the country.

11. The Assembly welcomes the Action plan to support the 2010 parliamentary elections in Azerbaijan adopted by the Ministers' Deputies on 10 March 2010 which focuses on a number of issues identified in co-operation with the Azerbaijani authorities and in liaison with other international institutions such as electoral legislation, training of election administration staff, media coverage of the campaign, raising voter awareness of electoral issues, and the organisation of public debates.

12. In the light of these considerations, the Assembly calls on the Azerbaijani authorities to ensure the necessary conditions for the full compliance of the forthcoming elections with the European standards, and in particular to:

12.1. co-operate with the Venice Commission with a view to revising the Electoral Code on the outstanding issues, namely the composition of the Central Electoral Commission and territorial electoral commissions, candidate registration, observers, the electoral roll and its accuracy, as well as the complaints and appeals procedures;

12.2. establish a free and fair candidate registration process and effective appeals procedures;

12.3. generate conditions for a fair electoral campaign, in particular through full implementation in practice of the law on the freedom of assembly and by ensuring the freedom of media;

12.4. enable candidates and activists representing opposition effectively to conduct their campaigns, be it in street rallies or through the media, in particular television;

12.5. refrain from any kind of discrimination with regards to candidates and activists on the basis of their political convictions and activity;

12.6. take the necessary measures to train members of election commissions in vote counting procedures;

12.7. resume without delay a dialogue between the ruling majority and the opposition both within and outside the parliament so as to improve the political climate and build the trust of the population in the electoral process;

12.8. take all necessary steps to guarantee access for women to elected offices at the next parliamentary elections, thereby contributing to the efforts made during the local elections of December 2009 which resulted in women being elected to 30% of seats in the local assemblies.

13. As regards the situation of the media and journalists, the Assembly condemns the arrests, intimidation, harassment, and physical threats of journalists as borne out by the Judgment of the European Court of Human Rights in the case *Fatullayev vs. Azerbaijan*. In this context, the Assembly also expresses concern about the fate of two youth activists, Emin Milli and Adnan Hajizade, who were sentenced to two years six months and two years prison respectively.

14. The Assembly also deplores the death of Novruzali Mammadov, a researcher and editor-in-chief of the only Talysh-language newspaper, Tolyshi Sado, who died in prison in August 2009 and whose name was on the list of political prisoners drawn up by the human rights organisations in Azerbaijan.

15. The Assembly welcomes the release of several imprisoned journalists following

the presidential pardons, in particular the well-known journalist and poet Mirza Zakit, Ganimat Zahidov, the editor of Azadliq, one of the main independent newspapers, Ali Hasanov, editor-in-chief of the Ideal newspaper, and Mr Mushvig Huseynov, a correspondent of the Bizim Yol newspaper. At the same time, it regrets that some journalists remain imprisoned.

16. The Assembly is also concerned by the often disproportionate character of criminal sanctions imposed on some journalists in defamation cases and reiterates its position that defamation should be decriminalised.

17. In the light of the above considerations, the Assembly calls on the Azerbaijani authorities to:

17.1. release Eynulla Fatullayev as ordered by the European Court of Human Rights notwithstanding the appeal by the Azerbaijani authorities to the Grand Chamber of the Court, procedure which is pending;

17.2. introduce amendments to the Criminal Code so as to decriminalise defamation, in line with the trend that can be seen at the international level and with the case law of the European Court of Human Rights and, in the meantime, refrain from bringing any new criminal prosecutions against journalists for defamation;

17.3. create the conditions for journalists to conduct their professional work without interference by the authorities.

18. Furthermore, the Assembly believes that further reforms of key state institutions are indispensable in order to ensure their functioning in full compliance with democratic standards in the electoral process. It expects Azerbaijan to comply fully with the Council of Europe standards for democratic elections in the forthcoming 2010 parliamentary elections, and expects to receive an invitation in good time to observe them.

19. In this context, it calls on the Azerbaijani authorities to pass on a clear message, at the highest political level, that electoral fraud will not be tolerated.

20. At the same time, the Assembly urges all political parties to take part in the forthcoming elections.

21. Moreover, the Assembly notes that the overall progress achieved by Azerbaijan in honouring its obligations and commitments undertaken by the country while acceding to the Council in Europe in 2001 will be presented to it in a specific report by the Monitoring Committee in 2011.

22. In the meantime, it encourages the Azerbaijani authorities to foster the reforms underway in areas ranging from the rule of law to the separation of powers ; it also calls on the Azerbaijani authorities to continue enlisting the expertise of the competent Council of Europe bodies before adopting crucial reforms for the functioning of the country's democratic institutions and, against the backdrop of the forthcoming parliamentary elections, not to confine themselves to complying with the letter of the law but to focus on its application in practice.

23. The Assembly invites Azerbaijan to bring its legislation in line with the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings and to ensure its effective implementation.

24. The Assembly congratulates Azerbaijan for its contribution to the parliamentary dimension of the Council of Europe campaign "Stop domestic violence against women" (2006-2008) and for the drafting of a law against domestic violence. It invites Azerbaijan to put into effect as soon as possible the law on preventing and combating domestic violence including violence against women, in accordance with the standards of the Council of Europe and the other international instruments, and to support the preparation of the future Council of Europe convention on preventing and combating violence against women and domestic violence, in accordance with Assembly [Resolution 1635](#) (2008) and [Recommendation 1847](#) (2008).

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<sup>1</sup> *Assembly debate* on 24 June 2010 (26<sup>th</sup> Sitting) (see [Doc. 12270](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Debono Grech and Mr Herkel). *Text adopted by the Assembly* on 24 June 2010 (26<sup>th</sup> Sitting).