

## **BRIEFING NOTE**

### **Honouring of obligations and commitments by Azerbaijan (Doc. 13084) Follow-up to the issue of political prisoners in Azerbaijan (Doc. 13079)**

**Parliamentary Assembly of the Council of Europe  
January 2013 session**

The following partners and members of the Azerbaijan Human Rights House and the South Caucasus Network of Human Rights Defenders have contributed to this briefing note and endorse its content:

- Azerbaijan Lawyers Association
- Democracy and HR Resource Centre Public Union (Sumgait)
- Human Rights Centre of Azerbaijan
- Human Rights Club
- Institute for Peace and Democracy
- Institute for Reporters' Freedom and Safety (IRFS)
- Legal Education Society
- Media Rights Institute
- Nakhchivan Regional Resource Centre for NGO Development and Democracy
- Public Association for Assistance to Free Economy
- Polish Helsinki Foundation For Human Rights
- Human Rights House Foundation

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**The independent human rights organisations, which prepared this briefing note, are all partners and members of the Human Rights House Network. The Human Rights House Foundation (HRHF) is the secretariat of the Human Rights House Network, a forum of cooperation between established and emerging Human Rights Houses, uniting 70 NGOs in 15 countries in Western Balkans, Eastern Europe and South Caucasus, East and Horn of Africa, and Western Europe. HRHN's aim is to protect, empower and support human rights defenders and their organizations.**

## **POLITICAL PRISONERS IN AZERBAIJAN**

We warmly welcome the resolution on the situation of political prisoners in the Republic of Azerbaijan and call upon members of PACE to adopt the draft resolution published in the report by Rapporteur Christoph Strässer (Doc. 13079).

The report thoroughly reflects the documentation done by many national and international human rights organisations on this issue. Although many political prisoners have been released in the end of 2012, the problem of political prisoners in Azerbaijan has not been solved. It is therefore important that the resolution calls upon the Azerbaijani authorities to resolve the cases of all alleged political prisoners as well as to take relevant measures to ensure that no further arrests are not made on politically motivated charges.

As a member of the Council of Europe, the Republic of Azerbaijan voluntarily agreed to observe the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and to act in good faith to fulfill those provisions.

Failure on the side of Azerbaijani authorities to solve the problem of political prisoners, against the recommendations formulated by the Parliamentary Assembly of the Council of Europe upon accession, and no willingness to cooperate with the Rapporteur should not remain unresponded on the part of the Assembly. The reference of the lack of cooperation with the Rapporteur should be underlined in the resolution.

The greater aim of the resolution is therefore to change a system in the country in which authorities use detention of critical voices, including human rights defenders, journalists and activists, with a “revolving door” policy, arresting and detaining some, releasing few others, again and again.

## **AZERBAIJAN'S COMMITMENTS AND OBLIGATIONS**

We also welcome the draft resolution on the honouring of obligations and commitments by Azerbaijan published in the report presented by Pedro Agramunt and Joseph Debonon Grech, but call upon members of PACE to adopt it with some key amendments.

We welcome especially the following elements in the resolution:

- The lack of independence of the judiciary is also an important issue mentioned in the resolution, as well as the use of fabricated charges against human rights defenders and journalists.
- The call to change the amendments to the Criminal and Administrative Codes criminalising organisers of and participants in unauthorised peaceful assemblies, in violation of art. 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

However, the draft resolution refers to human rights violations in diminishing terms, including by using reference to “some” violations (§ 7) or “some” well-known opposition parties not represented in parliament (§ 9) although none are.

**Furthermore, we believe the resolution should be more precise on the following elements:**

### **Freedom of assembly**

The resolution calls for a “compromise solution to allow protest actions in some areas of Baku city centre” (§ 18.7.1.1). This formulation is unacceptable and difficult to understand:

- Firstly, the right to peaceful demonstration is not the consequence of a compromise but a right that can only be restricted in respect with art. 11 of the European Convention. Calling for a compromise is a breach to the right to exercise freedom of assembly and therefore a grave step taken by PACE in weakening a fundamental human right;

- Secondly, the resolution calls for the right to be allowed only in Baku city centre. It is difficult to understand if the logic is that people in other parts of Azerbaijan shall not enjoy the right, which again would be a breach to the European Convention;
- Finally, it is difficult to understand between whom the compromise is to be found. Authorities are refusing to allow nearly all peaceful protest in the country and often use disproportionate force, and punish those organising and participating in such, thereby violating national law which has established a system a notification and not a system of authorisation for demonstrations. There are many examples of crackdowns in addition to the demonstrations in March and April 2011, which are the only ones mentioned in the report (paragraph 84).

The resolution also refers to legislation criminalising the exercise of the right to protest. We believe that demonstrators who resort to violence are not protected under Art. 11 of the European Convention and that they are to be punished by ordinary criminal law. States shall not resolve to use specific non-generic legislation against demonstrators or include in their criminal legislation specific articles in regard to demonstrations. This kind of legislation should be repealed.

*We therefore strongly urge PACE to amend the draft resolution and suggest the following amendments:*

**§ 18.7.1.1** Replace with "Allow peaceful assemblies to be organised in the whole country, including in Baku city centre, on the basis of a regime of notification in advance by the organisers."

**§ 18.7.1.3** Replace with "Repeal art. 221 and 223 of the Criminal Code."

### **Freedom of association and closure of the Azerbaijan Human Rights House**

The situation of international and Azerbaijani independent human rights NGOs is quite problematic and indeed authorities regularly threaten those NGOs being critical and use the registration process as a tool to punish critical voices.

The Azerbaijan Human Rights House (AHRH) was ordered to seize all activities on 10 March 2011 by the Ministry of Justice of the Republic of Azerbaijan. As of today, and to HRHF's knowledge, there is no change, neither development in the case of the reopening of Azerbaijan Human Rights House.

On 3 November 2011, the Ministry of Justice received and agreed on all documents submitted for a final application from AHRH in order for us to make an agreement with the authorities – after a process of negotiations since April 2011, including four official meetings and four written communications from the Azerbaijan Human Rights House to the Ministry of Justice. From the Azerbaijani authorities side, there has not been any written communications/answers, nor templates or plan for the negotiation process from the authorities' side. All initiatives to meet and communicate in the negotiation process have been taken by the Azerbaijan Human Rights House only, since the closing of Azerbaijan Human Rights House in 10 March 2011.

Unlike what is wrongly suggested in the report by the co-rapporteurs (paragraph 272), the Azerbaijan Human Rights House is not allowed to carry out any activities and not to use its premises, which served as an open meeting place for human rights defenders.

*We therefore urge PACE to amend the draft resolution and suggest the following amendments:*

**§ 18.8.1** Replace with "Fully implement all recommendations made by the Venice Commission in regard to the right to freedom of association and amend the law on NGOs and relevant regulations accordingly."

**§ 18.8.4 (new)** "Reregister without further delay all national and international NGOs which lost their registration since 2009 and immediately allow NGOs which were ordered to cease their activities to be active again, including the Azerbaijan branch of the Human Rights House Foundation (AHRH)."

### **Torture and ill treatment and killings within the armed forces**

We welcome the specific attention given to torture and ill treatment in the resolution (§ 18.5) but regret the silence of the report and the resolution on worrying cases of killings within the armed forces by members of the armed forces, which have resulted in dozens of cases of deaths in non-combat military losses.

We believe that the calls for independent investigations in these cases are important to be heard and that those responsible should be brought to justice.

We also see that in Azerbaijan those documenting and reporting cases of torture and ill-treatment face particular threats and believe they should indeed enjoy protection for their work, which is not addressed by the draft resolution.

*We therefore urge PACE to amend the draft resolution and suggest the following amendments:*

*§ 18.5.1: “pursue efforts to eradicate abuses by law enforcement officials by effectively implementing the measures to eliminate impunity and the lack of accountability for such abuses, including within the armed forces; in particular by ensuring proper investigations into individual cases;”*

*§ 18.5.4: “Ensure protection of human rights defenders and victims who are documenting and reporting cases of torture and ill-treatment, and promote civil society monitoring and develop further training and awareness-raising measures”*

## **Freedom of expression**

We call upon PACE to amend the resolution in order to call for the law on defamation to be fully and entirely repealed and not amended as suggested in the resolution (§ 18.6.1). The defamation law is indeed used against human rights defenders and journalists, including those working on revealing corruption.

Authorities often resort to violence, beatings, abductions, torture and the illegal detention of journalists. Such practices have led to an increasing sense of insecurity and a high incidence of self-censorship within the media community. From 2009 until now, four well-known independent journalists faced interference to their personal lives. During 2010-2012, nine journalists who were known for their critical research articles were arrested on fabricated and politicized charges ranging from hooliganism and drug possession to incitement to mass disorder that stemmed from their work.

Therefore, we believe that the resolution does not represent fully the situation in terms of freedom of expression (§ 18.6).

*We suggest the following amendment:*

*§ 18.6.1: Replace with “Repeal the law on defamation.”*

*§ 18.6.4: “Effectively investigate all cases of beatings, threats and smear campaigns reported by activists and journalists and bring the perpetrators to justice.”*

## **Situation of lawyers and lack of independence of Bar Associations**

As underlined in the resolution, the lack of independence of the judiciary is a grave concern. The lack of independence comes with pressure and threats against lawyers, as well as punishment of lawyers defending critical voices, including by disbarring them.

The Bar Association intimidates lawyers to discourage certain legal practices. Consequently disbarment or temporary suspension is a very effective way of controlling advocates and restricting them in the type of work they undertake, including discouraging them from taking sensitive human rights cases and filing the appeals to the European Court of Human Rights.

*We suggest the following amendment:*

*§ 18.2.1: “ensure full independence of the judiciary, in particular vis-à-vis the executive, and refrain from any pressure on it, as well as on the Bar Associations, including by insuring that all lawyers who were disbarred for political reasons are admitted into the Bar Associations again.”*

*§ 18.2.7: “Refrain from any pressure on lawyers defending activists and journalists critical of the authorities and ensure effective investigation into all reported cases of pressure, threats and violence against lawyers with a view to bringing the perpetrators to justice.”*

## **Worrying situation in the Autonomous Republic of Nakhchivan**

Although the report only reports very little about the human rights situation in the Autonomous Republic of Nakhchivan, the social and political situation is even more severe in Nakhchivan than in other parts of Azerbaijan, and it is known to be a region that is governed by subjective and partial “rules” instead of the laws.

People in Nakhchivan live under strong repressive management of the Supreme Assembly of Nakhchivan. The severe political situation of the region has caused the massive migration of the population, as they are forced to live in fear, the population has decreased almost in half. There is no room for opposition in Nakhchivan, as the ruling party does not hesitate to use all forms of pressure to weaken political opposition and oppress civilian opposition. Representatives of the local administrations of the above-mentioned parties have fled Nakhchivan to live in the capital Baku. Members of the opposition parties have to hide their identities in order to escape harassment and pressure from the government. During official elections, the government appoints their own trusted persons to represent the opposition.

There are also torture cases, which have been documented, but not been investigated properly. Human rights defenders and victims seeking justice are facing constant pressure.

The space for civil society is limited and controlled by local authorities and no representative offices international organisations, including of the Council of Europe, can launch their activities in Nakhchivan.

*We suggest the following amendments:*

**§ 17bis (new):** *“The Assembly is particularly concerned by the situation in the Autonomous Republic of Nakhchivan, including the reports of impunity of public officials in cases of torture and ill treatment, as well as the lack of democratic process in the region and the restrictions of freedom of assembly and association, as well as the lack of free space for independent human rights defenders.”*

**§ 18.5.2:** *“ensure effective investigation into all reported cases of alleged torture or ill-treatment, including in the Autonomous Republic of Nakhchivan, with a view to bringing the perpetrators to justice”*

## **Housing rights and evictions**

Although the evictions are mentioned in the report, the resolution stays silent about this practice, which the government of Azerbaijan has undertaken since 2008 as a programme of urban renewal in Baku. The authorities have illegally expropriated hundreds of properties, primarily apartments and homes in middle-class neighbourhoods, to be demolished to make way for parks, roads, a shopping centres, and luxury residential buildings.

The government has forcibly evicted homeowners, in several cases without warning or in the middle of the night, in order to demolish their homes. It has refused to provide homeowners fair compensation based on the market values of properties, many of which are in highly desirable locations and neighbourhoods.

A building of the Institute for Peace and Democracy was completely destroyed on 11 August 2011 by the authorities. A house, which belongs to the human rights defender Leyla Yunus, which also included a crisis centre for women, was demolished in less than an hour. All documents, equipment and office inventory were either destroyed or taken by the officials; none of IPD staff were allowed to take anything from the building. The destruction took place although the Baku Administrative Economic Court ruled that destruction of the building is inadmissible without a court decision. There was no court decision on the destruction of this building.

*We suggest the following amendment:*

**§ 16bis (new):** *Halt all further expropriations, evictions, and demolitions until they can be carried out in a fair and transparent manner and are consistent with Azerbaijani national law, court decisions related to the case, and international human rights standards. The authorities should in no circumstances begin to demolish or disassemble buildings in which people continue to live.*

## **Cooperation with the Venice Commission**

The resolution contradicts itself. It welcomes the “fruitful cooperation” (§ 6) Azerbaijan allegedly had with the European Commission for Democracy through Law (Venice Commission) but also calls upon the country to implement legislation according to the Venice Commission recommendations (§ 18.1.1 and 18.6.1 and 18.8.1 and 18.9.1).

Azerbaijan authorities do not cooperate with the Venice Commission but rather ignore its recommendations and fail to implement legislative changes recommended by the Commission and changes in practices to effectively implement the standards set by the Venice Commission. We believe cooperation with the Venice Commission should be welcomed when it is effective and when governments have willingness in good faith to implement recommendations.

*We suggest to delete the two last sentences of § 6 of the resolution.*