



Resolution 2185 (2017)¹

Provisional version

Azerbaijan's Chairmanship of the Council of Europe: what follow-up on respect for human rights?

Parliamentary Assembly

1. The Parliamentary Assembly has already adopted several resolutions on the situation in Azerbaijan since the Azerbaijani Chairmanship of the Committee of Ministers of the Council of Europe, which took place between May and November 2014, in particular [Resolution 2062 \(2015\)](#) on the functioning of democratic institutions in Azerbaijan, in which it assessed how those institutions operated and expressed its concerns regarding the lack of independence of the judiciary, the violations of the right to freedom of expression and association and the reprisals against independent media, human rights defenders, journalists and other persons expressing criticism of the authorities. It points out that developments in this country are under constant examination by its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).
2. The Assembly also refers to its [Resolution 2096 \(2016\)](#) "How can inappropriate restrictions on NGO activities in Europe be prevented?" and [Resolution 2095 \(2016\)](#) "Strengthening the protection and role of human rights defenders in Council of Europe member States".
3. The Assembly regrets that the 2014 Azerbaijani Chairmanship coincided with an unprecedented crackdown on human rights in Azerbaijan where dozens of individuals, including human rights defenders and other activists who had co-operated with the Council of Europe and the Assembly, were arrested and then given prison sentences. The Assembly welcomes the fact that in the course of 2016 most of them were released; however, some of these releases continue to be subject to conditions. The Assembly remains concerned about the reported prosecution and detention of leaders of non-governmental organisations, human rights defenders, political activists, journalists, bloggers and lawyers, allegedly in retaliation for their work.
4. The Assembly notes that the number of persons currently in detention, allegedly for having voiced criticism of the authorities, varies considerably depending on the sources. It encourages the competent authorities to review the individual cases to release human rights defenders, journalists, civic and political activists who were imprisoned on politically motivated grounds. The authorities should also consider, where appropriate, the use of non-custodial sentences or alternative measures to pretrial detention.
5. The Assembly is concerned about the increasing number of reports of violations of fundamental human rights and freedoms, such as those guaranteed by the European Convention on Human Rights (ETS No. 5, "the Convention") in Azerbaijan. It is particularly worried by the cases established by the European Court of Human Rights ("the Court") of torture and inhuman or degrading treatment during arrest, in police custody and in prisons, and the lack of effective investigations in this regard (violations of Article 3 on the substantial and procedural aspects), violations of the right to a fair trial (violations of Article 6), especially in criminal cases, and violations of the right to freedom of expression, association and assembly (violations of Articles 10 and 11).

1. *Assembly debate* on 11 October 2017 (32nd Sitting) (see [Doc. 14397](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Alain Destexhe). *Text adopted by the Assembly* on 11 October 2017 (32nd Sitting).



6. The Assembly reiterates that the prohibition of torture and inhuman or degrading treatment guaranteed by Article 3 of the Convention is a non-derogable right and it strongly condemns any violation of this right. It calls on the authorities to:

- 6.1. carry out prompt, effective and impartial investigation of all complaints on the use of torture and inhuman and degrading treatment, ensure that the perpetrators are brought to justice, and that impunity does not prevail;
- 6.2. take all the necessary measures to prevent further violations of this type;
- 6.3. step up its co-operation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and request publication of the reports of its visits.

7. The Assembly insists that the judicial system in Azerbaijan must be independent and impartial as in all Council of Europe member States. It reiterates that an independent judicial system is a precondition for a criminal justice system which complies with European standards. The Assembly is concerned about allegations of a systematic lack of independence of the judiciary vis-à-vis the executive and the arbitrary application of criminal law. It is concerned about allegations of the excessive use of pretrial detention by judges at the request of prosecutors, without a detailed examination of the grounds which could justify such detention, and the problems in properly ensuring the rights of the defence. It notes that the Azerbaijani authorities have announced the start of reforms to their judicial system following the relevant recommendations of the Council of Europe, in particular those of the Group of States against Corruption (GRECO) and the European Commission for the Efficiency of Justice (CEPEJ). Nevertheless, it finds that the concerns over the functioning of justice expressed in its [Resolution 2062 \(2015\)](#) remain valid. Furthermore, the constitutional amendments approved following the referendum of 26 September 2016 entail the risk of increasing the power of the executive in relation to the legislative and judiciary.

8. The Assembly calls on the Azerbaijani authorities to guarantee the full independence of judges vis-à-vis the executive and to begin real and meaningful reforms to establish a judicial system which complies with the requirements of Article 6 of the European Convention on Human Rights and the other standards of the Council of Europe.

9. The Assembly notes with great concern reports linking the Azerbaijani Government to a large-scale money laundering scheme occurring in the years 2012 to 2014, used *inter alia* to influence the work of members of the Assembly as regards the human rights situation in Azerbaijan. The Assembly urges the Azerbaijani authorities to start an independent and impartial inquiry into these allegations without delay and furthermore, co-operate fully with the competent international authorities and bodies on this issue.

10. The Assembly welcomes the Presidential Executive Order of 10 February 2017 on improving the functioning of the prison system, the humanisation of criminal policies and the extension of alternative sanctions and non-custodial preventive measures. However, it calls on the authorities to enact and apply rapidly the necessary legislation for it to be put into effect. It encourages the Azerbaijani authorities to ensure that it is applied in compliance with the standards of the Council of Europe. It also calls on Azerbaijan to create a separate juvenile justice system.

11. The Assembly stresses the fact that the exercise of fundamental freedoms of expression, assembly and association, guaranteed in Articles 10 and 11 of the European Convention on Human Rights, is essential for the proper functioning of a democratic society. The Assembly is extremely concerned about numerous allegations relating both to a restrictive climate for extra-parliamentary activities of the opposition and the limitations on the freedoms of expression, assembly and association, in particular with regard to independent media and advocates of freedom of expression. These systematic restrictions and limitations do not meet the criteria of legality, proportionality and necessity in a democratic society. It is very concerned about the reported problems concerning the use of criminal legislation to limit freedom of expression, as underlined by the Committee of Ministers in the context of its supervision of the application of the judgments of the European Court of Human Rights. The legislative framework for NGO activities does not comply with European standards, as stated by the bodies of the Council of Europe. Accordingly, the Assembly calls on the Azerbaijani authorities to:

- 11.1. ensure that activists, human rights defenders and other individuals are able to peacefully exercise these rights without fear of retribution.
- 11.2. remove the obstacles to the work of journalists and human rights defenders;
- 11.3. create an environment conducive to the work of the independent media and the activities of NGOs;

- 11.4. bring the legislation on defamation and NGOs into line with the requirements arising from the judgments of the European Court of Human Rights and the recommendations of the European Commission for Democracy through Law (Venice Commission);
 - 11.5. ensure that fair trial guarantees and due process rights are respected and upheld in all cases;
 - 11.6. abrogate any other legislative measure which could restrict the exercise of the freedoms guaranteed in Articles 10 and 11 of the Convention;
 - 11.7. apply the relevant legislation in compliance with the requirements arising from the Convention and the case law of the Court.
12. The Assembly calls on the government to eliminate obstacles to the activities of NGOs and to step up meaningful dialogue with civil society.
13. Given that this is a region currently experiencing considerable tension, the Assembly welcomes the secular nature of the State and its climate of religious tolerance, for example in relation to the Jewish community which, according to its representatives, lives in harmony with the rest of the population.
14. The Assembly is aware that Azerbaijan, like most countries in the Council of Europe, is faced with the problem of foreign fighters in Syria and Iraq, and it supports the government's efforts to combat this phenomenon, urging it to do so with full regard for the principles of the rule of law. The Assembly shares the authorities' concern to combat the financing of terrorism.
15. The Assembly refers to its [Resolution 2178 \(2017\)](#) on the implementation of judgments of the European Court of Human Rights. It notes that more than 120 Court judgments against Azerbaijan have not yet been executed or have been only partially implemented. The Assembly notes that little progress has been made regarding the execution of certain judgments or groups of judgments, in particular regarding ill-treatment, violations of the right to a fair trial, the right to freedom of expression and freedom of assembly and association, and the right to free elections. It calls on the authorities to co-operate fully with the Committee of Ministers and the Department for the Execution of Judgments of the European Court of Human Rights and to take all the necessary measures to implement quickly and fully the judgments of the Court, including the payment of just satisfaction to applicants within the time frames set out in the Court's judgments.
16. The Assembly refers to the Court's judgment of 22 May 2014 concerning Mr Ilgar Mammadov and the repeated calls of the Committee of Ministers for his release. The Assembly urges the Azerbaijani authorities to execute the judgment and release Mr Mammadov immediately.
17. The Assembly encourages the Azerbaijani authorities to step up the measures to raise the awareness of the standards of the European Convention on Human Rights among judges, prosecutors, law-enforcement officers and lawyers.