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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

AZERBAIJAN

MEMORANDUM

**MISSION OF A DELEGATION OF THE
VENICE COMMISSION
TO BAKU**

30 NOVEMBER – 1 DECEMBER 2000

A delegation of the European Commission for Democracy through Law (Venice Commission), composed of :

- Mr Gérard Batliner, Vice-President of the Commission,
- Mr Laszlo Solyom, President of the Sub-Commission on Constitutional Justice,
- Mr Georg Nolte, substitute member,
- Mr Luis Lopez Aguillar, substitute member,

accompanied by Mr Buquicchio and Mr Dürr from the Secretariat of the Commission as well as Mr Pall Thorhallsson from the Media Division of the Directorate General of Human Rights visited Baku on 30 November – 1 December 2000.

Objectives of the mission :

The objectives of the mission were on the one hand to continue the work of the Commission on the introduction of an individual complaint to the Constitutional Court of Azerbaijan in accordance with the Assembly Opinion No. 222 (2000) and on the other hand to establish contacts and a programme of co-operation with the authorities of Azerbaijan to provide assistance "with a view to reforming the Constitution, the electoral law and the media law in conformity with Council of Europe standards" (CM(2000)170).

Meetings :

The delegation had meetings with the following persons:

- the President of the Republic, Mr Heydar Aliyev,
- Messrs Ramiz Mehdiyev, Shain Aliyev, Fuad Aleskerov and Ali Hasanov from the presidential administration,
- the Chairman of the *Milli Majlis* (Parliament), Mr Murtuz Aleskerov,
- the Deputy Chairmen of Parliament, Messrs Zakir Zeynalov and Ziyafet Askerov, heading a group of members of Parliament,
- the Minister of Justice, Mr Fikret Mammadov,
- the Vice-Minister of Foreign Affairs, Mr Albert Salamov (the Minister participating in the CIS summit on in Minsk, on the sidelines of which bilateral negotiations on the Karabakh conflict were to take place),
- the Chairman of the Constitutional Court, Mr Khanlar Hajiyeve, and the judges of the Court,
- the Chairperson of the Supreme Court, Ms Sudaba Hasanova, and the Chairperson of the Court of Appeals Ms Gulzar Rzayeva,
- the Chairman of the Central Electoral Commission, Mr Mazahir Panahov,
- ambassadors from Council of Europe member states and the OSCE,
- media representatives.

The programme of the visit figures in annex II. A partially separate programme was set up to cover the media field (annex III).

The President of the Republic underlined the importance he attached to the accession of Azerbaijan to the Council of Europe and reaffirmed that his country would abide by all commitments given to the Council. He acknowledged that accession to the Council of Europe required intensive efforts: the values of the Council would have to be applied in practice in all fields. Underlining progress made during recent years, the President confided in the delegation his country's bitter impression that Azerbaijan would be admitted only in order to

uphold the strategic balance in the region. He voiced indignation that his country had sometimes been treated as being "second class". Recalling that twenty percent of the territory of Azerbaijan was still occupied and that as a result the country had to support more than one million refugees, he regretted that the efforts of the international organisations to resolve the Karabakh conflict had not yielded results so far. The President undertook to work together with the Council in good faith and nominated Mr Ramiz Mehdiyev, the head of the Presidential Administration, as co-ordinator for the co-operation with the Venice Commission representing the executive branch.

The chairman of the Milli Majlis (Parliament), Mr Murtuz Aleskerov, assured the delegation of the Venice Commission that all commitments of Azerbaijan towards the Council of Europe would be respected. He acknowledged that several laws would need to be amended, expressly mentioning the law on the mass media. While insisting that most of the recommendations made by the OSCE had been integrated into the electoral laws, he agreed that further amendments would be necessary. The envisaged law on ethnic minorities should be discussed as well. Asked about the powers of Parliament, Mr Aleskerov informed the delegation that the separation of powers as defined in the Constitution limited Parliament to a strictly legislative function but he declared his openness to suggestions from the Venice Commission in all areas. Mr Aleskerov nominated Mr Safa Mirzoyev, head of the administration of the Parliament, as the Parliament's co-ordinator for the co-operation with the Venice Commission.

The delegation also met a group of members of Parliament headed by the Vice-Chairmen, Messrs Zakir Zeynalov and Ziyafet Askerov. Pointing out that Parliament had obtained the advice of the Council of Europe on a large number of laws during the last five years, they acknowledged that much work remained to be done. The delegation of the Venice Commission identified three main thrusts of necessary changes in the Constitution:

- harmonising the list of human rights with the ECHR, especially as concerns the limitations of rights;
- reinforcing the powers of Parliament;
- strengthening the independence of the judiciary.

As concerns electoral legislation, the delegation addressed necessary improvements of the registration procedure, streamlining the appeals procedure and the composition of the electoral commissions possibly with the involvement of international elements. The Vice-Chairmen declared their openness to amending the existing legislation in order to bring it into line with Council of Europe standards.

The Chairman of the Central Electoral Commission, Mr Mazahir Panahov, pointed out that nearly all recommendations of the OSCE had been integrated into the electoral laws. As concerns the registration procedure, the CEC had been obliged to refer complaints to the ordinary courts because the CEC lacked both the powers and the means to investigate the validity of signatures in the run-up to the recent parliamentary elections. The delegation of the Venice Commission indicated that a neutral composition of the electoral commissions was a key element in order to ensure democratic elections and expressed the hope that Mr Panahov would be involved in the work on the revision of the electoral laws.

The meeting with the Chairman of the Constitutional Court, Mr Khanlar Hajiyev, and the judges of the Court dealt with the introduction of direct access of individuals to the Constitutional Court. This topic had already been the object of co-operation between the Constitutional Court of Azerbaijan and the Venice Commission before the Venice

Commission received the mandate of the Committee of Ministers.. Apart from procedural questions of how to introduce necessary constitutional amendments or changes, the main issue discussed was whether the Court should be able to annul individual acts violating constitutional rights (German model) or only normative acts which are the basis for individual acts. The delegation pointed out that the German model had the advantage of filtering on the national level complaints that otherwise would be addressed to the European Court of Human Rights. Difficulties in the relationship with the Supreme Court and an overloading of the Constitutional Court by a large number of complaints were, however, potential disadvantages of this model. Procedural means to deal with the latter problem would have to be sought.

The delegation invited Mr Hajiev in his capacity as member of the Venice Commission to become co-ordinator for the co-operation with the Commission.

The meetings with the Minister of Justice, Mr Fikret Mammadov, and the Chairperson of the Supreme Court, Ms Sudaba Hasanova, as well as the Chairperson of the Court of Appeals, Ms Gulzar Rzayeva, focussed on the reform of the judiciary and the recent procedure to appoint all judges in the country. 60 per cent of the persons nominated had not been judges before. The delegation of the Venice Commission was informed about the newly introduced Legal and Judicial Council and the reduced role of the prosecutor. These changes had been introduced by ordinary law and had not yet been reflected in the Constitution. With respect to the role of the judiciary dealing with appeals against decisions of electoral commissions, the Minister suggested that the experience of the last parliamentary elections should be used in order to find improved ways to deal with such appeals.

As regards the revision of the Media Law, some members of the delegation met with the Head of the Public Policy Department of the President's Administration, Mr Ali M. Hasanov, the Head of the Mass Media Section of the Ministry of Information, Mr Mamat Mammadov, and a Member of Parliament, Mr Rizvan Jabiyev. The delegation also had consultations with representatives of non-governmental organisations, namely Mr Arif Aliyev, Chairman of the Union of Journalists "Yeni Nesil", Mr Aflatun Amashov, Chairman of the Committee for the protection of journalists, and Mr Kham Safarov, Co-director of Internews, an international non-governmental organisation supporting private broadcasters in transition States.

Mr Hasanov admitted that, in particular, three provisions of the existing Mass Media Law adopted in 1999 called for revision. The first one is the much criticised Article 19, under which the courts, upon a claim by the responsible authorities, can order the closure of mass media entities if they violate the law three times in one year. In addition to Article 19, Mr Hasanov indicated that the authorities were willing to re-examine Article 27, on the confiscation of printed matter, and Article 50, on the registration of journalists. The representatives of non-governmental organisations agreed that these were problematic provisions, but underlined that other aspects of the Law would also need to be reconsidered.

As regards the broadcasting sector, the Government intends to prepare a separate Broadcasting Law aimed at transforming the State television, which has been heavily criticised for being the mouthpiece of the Government, especially before elections, into a pluralistic public service broadcaster, in accordance with Assembly Opinion No. 222 (2000).

Despite Decree No. 84 of the Cabinet of Ministers of the Azerbaijan Republic of 16 April 1998, several regional private broadcasters have not been able to receive licences from the

Government. As a result, they lack legal certainty in their activities and can be subject to arbitrary closure by local authorities. To tackle this problem, the idea of creating an independent regulatory authority for the private broadcasting sector, in line with the European model, was discussed.

In conclusion, Mr Hasanov declared that his authorities were willing to do everything necessary to implement as soon as possible the Council of Europe standards in the media field bearing in mind Opinion No. 222 (2000) of the Parliamentary Assembly of the Council of Europe. He also indicated that any revision of existing laws or the introduction of new legislation in this field would be carried out in close co-operation with non-governmental organisations, in particular the journalists' organisation "Yeni Nesil", which enjoys wide support among journalists and civil society in general. The representatives of non-governmental organisations expressed the view that it is not sufficient to create a sound legal framework for the media. The latter must also be implemented and respected in practice, by both the courts and the administration.

The delegation informed the ambassadors of the Council of Europe member States as well as from the OSCE about the results of their visit.

The meeting with the Vice-Minister of Foreign Affairs, Mr Albert Salamov, served to summarise the results of the visit. Mr Salamov again assured the delegation that all commitments undertaken by his country would be scrupulously fulfilled.

It was decided that Messrs Hajiyeu, Mirzoyev and Mehdiyev will draw up a detailed programme of co-operation to be presented at the next plenary session of the Venice Commission on 15-16 December 2000 with a view to its examination and possible approval by the Commission. This would enable the Commission to report to the Committee of Ministers in January 2001.

Shortly after the visit to Baku, the Venice Commission received a letter from Mr Hajiev confirming - in the name of the authorities of the Azerbaijan Republic – the submission of several laws to the co-operation with the Venice Commission, in addition to the issues covered by the mandate of the Committee of Ministers (see Annex I). These topics are reflected in the provisional programme attached.

The main contents of the co-operation programme:

Constitutional reform:

- Reinforcement of the role of Parliament.
- Constitutional clauses on restrictions to Human Rights should be more clearly defined
- Regulation at the constitutional level of guarantees of independence of the newly created Legal and Judicial Council.
- Redefinition of the constitutional powers of the prosecutor in line with the revised law on the prosecutor and Council of Europe standards (in co-operation with the relevant divisions in the Directorate General on Legal Affairs).
- Possible introduction of an independent regulatory authority for the broadcasting sector with constitutional guarantees for its independence and powers (in co-operation with the Directorate General on Human Rights).
- Introduction of the office of the ombudsman at the constitutional level, guaranteeing its independence from the executive.
- Any other points which might be addressed during a detailed examination of the Constitution.

Several of the above points will require implementing laws. The Venice Commission will co-operate with the Directorate General of Legal Affairs and the Directorate General of Human Rights.

Electoral legislation:

- The law on the central electoral commission should be revised in order to guarantee the neutrality of electoral commissions.
- The system of electoral appeals needs to be streamlined. The electoral commissions should deal with complaints directly rather than to refer them to the prosecutor or ordinary courts.
- Introduction of additional safeguards against attempts of electoral fraud.

The introduction of direct individual access to the Constitutional Court:

- An amendment to Article 60 or 130 of the Constitution and changes in the Law on the Constitutional Court will be required. The civil and criminal procedure codes may need to be revised accordingly.

Media – freedom of information (under the responsibility of the Directorate General on Human Rights):

- Revision of the existing Law on the Mass Media
- Preparation of a Law on Television and Radio Broadcasting and assistance in the establishment of a public service broadcasting organisation
- Assistance in the establishment of an independent regulatory authority for the broadcasting sector (see the chapter on constitutional reform above)
- Preparation of a Law on Freedom of Information and revision of the Law on State Secrets
- Assistance in the definition of a proper balance between the journalist's rights to collect and disseminate information on the one hand, and the right to privacy, honour and dignity of individuals on the other hand

Other legislation:

Co-operation on the introduction of a law on minorities (in co-operation with the Directorate General on Human Rights)

Annex I

Annex II

**Program of the
Visit of the Experts of
the Council of Europe's Venice Commission to Baku
(30 November–1 December, 2000)**

Thursday, 30 November

10:00	Meeting at the President's Administration
11:15	Meeting with Mr Fikret Mammadov, Minister of Justice
12:30	Meeting with the President of the Azerbaijan Republic
13:00	Lunch
15:00	Meeting with the Chairman of <i>Milli Majlis</i> (Parliament)
16:00	Meeting with deputies of the Parliament
17:00	Meeting with Mr Mazakhir Panahov, Chairman of the CEC
18:30	Meeting with Ambassador Cornelisen, OSCE
20:00	Dinner

Friday, 1 December

10:00	Meeting with Mr Khanlar Hajiyev, Chairman of the Constitutional Court and Judges of the Constitutional Court
12:00	Meeting with Ambassadors of the member-States of the Council of Europe and OSCE
13:30	Lunch
15:30	Meeting with Ms Sudaba Hasanova, Chairperson of the Supreme Court, and Ms. Gulzar Rzayeva, Chairperson of the Court of Appeal
17:00	Meeting at the Ministry of Foreign Affairs
20:00	Dinner

Annex III**Program of the meetings in the media field****Thursday, 30 November**

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| 10:00 | Meeting with Mr Ali Hasanov, Head of Public policy department of the President's Administration |
| 11:00 | Meeting with Mr Madat Mammadov, Head of the Mass Media section of the Ministry of Information |
| 13:00 | Lunch |
| 15:00 | Meeting with the representatives of mass media and non-governmental organizations:
Mr Arif Aliyev, Chairman of the Union of Journalists "Yeni Nesil"
Mr Aflatun Amashov, Chairman of the Committee for the protection of journalists
Mr Kham Safarov, Co-director of Internews |
| 16:30 | Meeting with Mr Rizvan Jabiyev, responsible for Mass Media, Deputy of Milli Majlis |