

# A Portrait of Deception

## **Monitoring Azerbaijan or Why Pedro Agramunt should resign**

22 January 2013  
Berlin – Brussels – Istanbul

On Wednesday afternoon (23 January) parliamentarians from the 47 member states of the Council of Europe will gather in the grand hemicycle debating chamber of the Palace of Europe in Strasbourg. They will have before them two reports on Azerbaijan: one on political prisoners and one on the “honouring of obligations and commitments by Azerbaijan.” The latter is the first such report written since the Spaniard Pedro Agramunt and the Maltese Joseph Debono Grech were appointed, in 2010 and 2009, as monitoring rapporteurs for Azerbaijan.<sup>1</sup>

There are very few fellow members of the Parliamentary Assembly of the Council of Europe (PACE) who have been to Azerbaijan as regularly over the past decade as Pedro Agramunt, the conservative Spanish senator, a businessman from Valencia. Agramunt has been consistent in this approach to Azerbaijan: from the very beginning of his relationship with Baku he has been a defender of the Aliyev regime. The latest monitoring report is his masterpiece.

The Agramunt/Grech report is supposed to assess whether Azerbaijan, as a member of the Council of Europe since 2001, has fulfilled the commitments it took upon itself when it joined the organisation. In fact, it is a sophisticated effort to hide a simple truth, a portrait of deception: in all areas a democracy cannot do without – from free and fair elections to freedom of speech, freedom of assembly or basic political and human rights, including the rule of law through an independent judiciary – the situation in Azerbaijan, already terrible a decade ago, is even worse today.

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<sup>1</sup> The last full monitoring report on the honouring of obligations and commitments (written by Andres Herkel and Tony Lloyd, Doc. 11226) dates back to 2007.

## Finding “progress” in Azerbaijan

The first sentence in the summary of the Agramunt/Grech report states the following:

“The Monitoring Committee **recognises the progress** made by Azerbaijan with regard to the establishment of the legislative framework **in some areas crucial** for the functioning of democratic institutions since its accession to the Council of Europe. However, restrictive application or **violations of some laws** are resulting in growing concern with regard to the rule of law and respect for human rights.”

In fact, the report cites only three examples of progress in matters concerning democracy and human rights. First amongst these, Azerbaijan signed and ratified some Council of Europe conventions:

“As of 5 June 2012, Azerbaijan had signed and ratified 56 of the 213 Council of Europe conventions including all but one of the legal instruments included in the list of commitments” (para. 52).

Second, there was some judicial reform:

“Among the relevant laws, the establishment of the **Judicial Legal Council in 2005** constituted **a major step** towards ensuring the smooth functioning of the judicial system. Furthermore, the newly adopted legislation provided for a **revised recruitment procedure for judges**, establishing a fair and transparent selection procedure, drawn up in co-operation with the Council of Europe” (para. 137).

“In February 2009, the President issued a decree establishing the **2009-2013 State Programme on Development of the Justice System**. The programme’s objectives included improving legislation and the quality of professional staff training”(para. 139).

Finally, there were some measures taken to fight corruption

“... Extended to judges the financial requirements set forth in the 2004 Law on Combating Corruption, including the submission of tax returns and restrictions on gifts. A channel for individuals and legal persons to complain about judicial corruption was also created and training programmes for candidates for the judiciary have been established” (para. 137).

Remarkably, these three examples are the only illustrations of positive reforms in the whole forty-page report. However, if one takes a closer look at these three illustrations of progress, one notices something surprising:

- First, most of the reforms cited actually took place before the period covered by the monitoring report (2007-2012). The ratification of conventions happened between 2001 and 2004. Establishment of the Judicial Legal Council, the only reform in the whole report described as a “major step,” took place in 2005.
- Secondly, none of these reforms made any difference to the authoritarian nature of the Azerbaijani regime. As the report notes a few paragraphs after praising the Judicial Legal Council, this institution was unfortunately “not tasked with ensuring and implementing judicial independence,” as this is the job of the president. The report

notes that “it would **appear** problematic in any country to rely upon a single person to ensure the independence of the judiciary” (para. 143).

- Third, a revised recruitment procedure for judges is unlikely to make much difference given that “the selection procedure for the majority of the members of the Council involves not only the judges electing their peers, but also the executive. This procedure does not comply with Council of Europe standards and should be revised ... Regrettably, the current practice in this respect in Azerbaijan is not in line with European standards, due to the decision-making power of the President over the appointment of judges enshrined in the constitution, the Judicial Legal Council Act and the Courts and Judges Act” (paras. 147 and 149).

In general, judicial reforms also made little difference so far:

“It is a matter of concern that, as in some other countries with a Soviet legacy, in many cases courts seem to be an extension of the prosecutor’s office. This is evidenced, *inter alia*, by an almost nonexistent percentage of acquittals (less than 1%)” (para. 157).

Besides these hollow examples of progress the report cites not one positive step concerning these core Council of Europe commitments: elections, party pluralism, separation of powers, local democracy, elimination of torture and ill-treatment, freedom of expression, freedom of assembly, freedom of association, freedom of religion, alternative military service, or protection of minorities.

The two rapporteurs evidently faced a dilemma. They could not find signs of progress, since there was none. Instead they cite things that happened earlier and made little difference, describe them as “major”, and sum it up in an eye-catching first sentence in the executive summary. It is an impressive sleight of hand. It is also deeply dishonest.

### **How democratic shortcomings are presented**

There is certainly no shortage of problems touched upon in the report. Yet it is only when one takes a closer look at the language in which these shortcomings are described that one notices further obfuscation.

“Since Azerbaijan’s accession to the Council of Europe in 2001, two presidential elections (in 2003 and 2008) and two parliamentary elections (in 2005, followed by a partial re-run in 2006, and in 2010) have been held. All of them were observed by the Assembly. Regrettably, none of these ballots **fully** met democratic standards” (para. 8).

The key word here is *fully*. This insinuates that some of these ballots have met at least some basic democratic standards. In reality, they have met none at all, as reports by international observers make clear (see page 10).<sup>2</sup>

“In two consecutive resolutions on the functioning of democratic institutions in Azerbaijan, adopted in 2008 and 2010, the Assembly called on the authorities to ensure the necessary conditions for full compliance of the November 2010 elections with European standards ... Both resolutions also called for the establishment of conditions for a fair electoral campaign, in particular through full implementation in practice of the law

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<sup>2</sup> See OSCE/ODIHR reports on elections in Azerbaijan at <http://www.osce.org/odihr/elections/azerbaijan>.

on freedom of assembly and by ensuring media freedom. These outstanding concerns were not **fully** addressed in time for the November 2010 parliamentary elections” (para. 97).

The magic word is again *fully*. In reality not one of these concerns were addressed. There was nothing resembling freedom of assembly, as since 2005 all rallies in Baku were invariably banned or forcibly dispersed by the police. Neither was there any freedom of the media, as the already bad situation had actually deteriorated further.<sup>3</sup> In fact, in 2010 only 38 of 88 candidates from the main opposition parties were even allowed to register and stand in elections. Furthermore, during the elections OSCE/ODIHR assessed the vote count negatively in 32 percent of polling stations.<sup>4</sup>

Agramunt/Grech continue:

“In the course of the 2010 elections, the opposition **did not manage to unite** and was very fragmented (five blocs and two parties) and, **as a result**, very few opposition candidates won seats” (para. 82).

Concerning the consequences of this the report continues:

“The main weakness of the parliament is that there is no real opposition. As we mentioned before, **some opposition parties remain outside** the elected body and those which are **inside are perceived as supporting the ruling party** in most cases. This **often unjustified perception** is strengthened by the limits imposed on the possibilities for parliamentary action by individual members in the present internal rules of the Milli Mejlis (Parliament of Azerbaijan). According to these rules, the establishment of a parliamentary faction requires at least 25 members of parliament (20% of 125). In most Council of Europe member States, this figure is 3% to 5%” (para. 118).

No evidence is given why the perception that most independent MPs support the government might be “unjustified”; instead, the claim is repeated two more times:

“There is a variety of registered political parties in Azerbaijan, **many of them critical** towards the authorities. However, following the November 2010 elections, several opposition parties did not win any seats in the parliament. As already mentioned, the ruling party obtained 71 out of 125 seats, the **other mandates being won by 45 independent candidates and by single representatives of other parties who in general support the ruling party**. This does not preclude their **often critical** approach to governmental policies” (para. 99).

Will future elections be different?

*“Unfortunately, until now, several of the concerns raised during previous elections have remained unaddressed”* (para. 98).

In fact, “several” implies that *some* have been addressed. It is no coincidence that these are not explained.

<sup>3</sup> OSCE/ODIHR, “Republic of Azerbaijan Parliamentary Elections 7 November 2010. OSCE/ODIHR Election Observation Mission Final Report”, 25 January 2011, p.12. <http://www.osce.org/odihr/elections/azerbaijan/75073>.

<sup>4</sup> OSCE/ODIHR, “Republic of Azerbaijan Parliamentary Elections 7 November 2010. OSCE/ODIHR Election Observation Mission Final Report”, 25 January 2011, p. 3, <http://www.osce.org/odihr/elections/azerbaijan/75073>.

Concerning political prisoners they note:

“Since the beginning of our mandate, we have been very much concerned with the question of alleged political prisoners and prisoners of conscience. Whilst we understand Azerbaijan’s fear of extremism and terrorist threats, at the same time we condemn the suppression of basic freedoms by means of criminal prosecution” (para. 203).

In the whole report there is no mention of the fact that the authorities in Baku continue to deny even the possibility that political prisoners might exist – and that they totally stonewalled the PACE rapporteur for political prisoners Christoph Straesser during his entire mandate starting in March 2009, during which Straesser was refused a visa to travel to Azerbaijan on a fact-finding visit).

When talking about Azerbaijan’s failure to ratify the European Charter for Regional or Minority Languages, the authors of the report go even further, putting themselves into the position of Ilham Aliyev to “explain” this:

“We imagine that the reluctance of the authorities may be linked to the fear that the implementation of the Charter may be misused by some radical groups in the areas close to the Iranian border.”

On religious freedom the first finding of the report is:

“The Azerbaijani government has managed so far to keep Islamic fundamentalism at bay and ensures that other religions can be freely practised” (para. 19).

Only much later does the reader learn that:

“Restrictive conditions concerning religious communities were reinforced on the occasion of the adoption, in May 2009, of amendments to the law on freedom of religion. Under the previous law, an individual found guilty of a single violation (producing, importing or distributing religious literature without approval from the State Committee and the sharing of “religious propaganda” by foreigners) would be fined 100 to 300 manat (approximately between €105 and €315). Under the new law, an individual convicted of the same violation will be fined 1,500 to 2,000 manat (approximately between €1,580 and €2,100)” (para. 293).

There are also areas where shortcomings are presented clearly, but no consequences for Baku’s membership of the Council of Europe are suggested. Take for example freedom of expression:

“... serious concerns with regard to the freedom of expression were raised by the Council of Europe Commissioner for Human Rights in his 2010 report on Azerbaijan and his observations on the human rights situation in 2011, by the OSCE Representative on Freedom of the Media and by the European Parliament. Azerbaijan ranks 162nd in a list of 173 countries in the Reporters Without Borders World Press Freedom Index. This is the poorest record of any Council of Europe member State. Azerbaijan came in lower than countries such as Saudi Arabia or Uzbekistan” (paras. 226-227).

Matters are equally bleak for freedom of assembly:

“Demonstrations which go ahead without authorisation are often dispersed with force and lead to arrests and in some cases disproportionately harsh sentences of administrative detention or prison. Freedom of assembly encountered serious setbacks in 2011 … In a worrying new development, parliament has recently adopted amendments to the Criminal Code and Administrative Code increasing penalties for participants in and organisers of unauthorised demonstrations. Combined with an ongoing blanket ban on rallies in Baku, these amendments are likely to further limit freedom of assembly and expression” (paras. 257, 258, 266)

Pressure on opposition lawyers is growing ever heavier:

“Arbitrary expulsions from the Azerbaijani Bar Association and criminal cases lodged against some of them have also been reported … We hope that this situation, detrimental to the rule of law, will soon be remedied. Pressure is also put on the activities of independent lawyers and human rights defenders. They are subject to threats and blackmailing by the authorities; sometimes they are prevented from enjoying their professional rights, or these are interfered with, such as meetings with clients or independent carrying out of their duties. Several lawyers have allegedly been warned not to defend the rights of detained persons …” (paras. 159-161).

And yet throughout the report Azerbaijani authorities are praised for “*always declaring their pro-European aspirations.*” The report never specifies which aspirations these might be (in a recent expert assessment it placed second to last, alongside Belarus, in a ranking of Eastern Partnership countries and their integration with the EU in different areas).<sup>5</sup>

Overall this style and organisation of the material is like putting lipstick on a pig, ignoring the increasing level of repression in all areas by an openly authoritarian regime. This goes against the Council of Europe’s clearly defined standards. In the early 1990s the Council of Europe identified a number of clear benchmarks that every one of its members was expected to meet. Holding “free and fair” elections is one; ensuring freedom of thought and expression is another. As the heads of government of its member states declared at a summit in Vienna in October 1993:

“The people’s representatives must have been chosen by means of free and fair elections based on universal suffrage. Guaranteed freedom of expression and notably of the media, protection of national minorities and observance of the principles of international law must remain, in our view, decisive criteria for assessing any application for membership.”<sup>6</sup>

By these criteria Azerbaijan is not a democracy today, however far one stretches the definition. For this, however, Agramunt/Grech blame Azerbaijan’s neighbours more than its rulers. The report explains:

“Azerbaijan’s political and security situation is **to a large extent determined** by the geopolitical context and can hardly be considered in isolation from it. The country is squeezed between the Russian Federation, Iran and Armenia” (para. 3).

The message is clear: it is Russia, Iran and Armenia which are responsible for the “political situation” in Azerbaijan.

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<sup>5</sup> International Renaissance Foundation and Open Society Foundation, “European Integration Index for Eastern Partnership Countries,” May 2012 p. 14, [http://www.eap-index.eu/sites/default/files/EaP%20Index%202012\\_1.pdf](http://www.eap-index.eu/sites/default/files/EaP%20Index%202012_1.pdf).

<sup>6</sup> Council of Europe Committee of Ministers, “Vienna Declaration”, 9 October 1993.

Remarkably, the most passionate complaint of the authors in the whole text is this outburst: "we were confronted with unprecedeted pressure from a number of Azerbaijani non-governmental organisations which did not appear to understand the nature of parliamentary monitoring" ... it is these civil society organisations that "have not made our task any easier." It is the not-registered, not-allowed-to-demonstrate, invisible-on-local-TV, harassed civil society groups critical of the government and of its apologists which trigger the sharpest expression of anger in the whole report.



Leonid Slutsky (a Russian nationalist who received the Order of Friendship from President Aliyev of Azerbaijan) handing over a portrait to Pedro Agramunt. Both men have long defended the record of the Aliyev regime in the Council of Europe

### **Excellent cooperation?**

Throughout the report the Aliyev regime is praised for its “cooperation” with the Council of Europe and its bodies:

“We wish to stress here that throughout the entire period of the preparation of the present report, cooperation with the Azerbaijani authorities and with the Azerbaijani parliamentary delegation to the Assembly was excellent, and we received all the necessary information and organisational support for our fact-finding visits” (para. 16).

This might be considered a standard acknowledgement and not in itself remarkable. What is in need of explanation, however, is a statement like this:

“We would like to take this opportunity to congratulate the Azerbaijani authorities for their constructive co-operation with the Venice Commission” (para. 10).

During the reporting period, the Venice Commission, the Council of Europe's legal advisory body, delivered several opinions. These touched upon the Electoral Code, recent amendments to the Constitution, on legislation on nongovernmental organisations; and on the law on the freedom of religious belief. So what have been the practical outcomes of Baku's "constructive cooperation" with the Venice Commission?

On the issue of the Electoral Code, key recommendations repeatedly made by the Venice Commission were never taken into account. These concern the very backbone of any free and fair election: the registration of candidates, the composition of the Central Electoral Commission and the adjudication of complaints and appeals. PACE has called on Azerbaijan to amend the Electoral Code in line with these recommendations in resolutions adopted in 2002, 2005, 2007, 2008 and 2010<sup>7</sup> – always in vain.

Azerbaijan also ignored the Venice Commission with regard to the issue of constitutional reforms. In 2009 Azerbaijan held a referendum on 41 amendments to 29 articles of the Constitution, including the article that limited the number of presidential terms. As the monitoring report admits:

"It is to be noted that the authorities had not sought the Venice Commission's opinion on the proposed amendments prior to the referendum, despite their considerable impact on the functioning of democratic institutions ... the opinion was only adopted in March 2009, a few days before the referendum and was not taken into consideration by the Azerbaijani authorities" (para. 78).

On amendments to the Law on Political Parties Agramunt/Grech note:

"We wish to express here our satisfaction that the government decided to seek the Venice Commission's expertise, but we regret that it did not take into account all the recommendations ... While not addressing earlier concerns, some of the proposed amendments introduce new regulations which have been criticised in the Venice Commission's opinion" (para. 110).

In the area of local democracy, Azerbaijan has rejected all calls by the Congress of Local and Regional Authorities, another Council of Europe body, to expand the "very limited" powers of local authorities.<sup>8</sup> The constitutional referendum in 2009 instead proposed an amendment that severely **undermined** the already limited independence of municipalities.<sup>9</sup> Pushed to finally introduce mayoral elections in Baku<sup>10</sup> the head of the Azerbaijani delegation to PACE Samad Seyidov protested that Azerbaijan was an "independent state" and had "more important issues" to deal with than mayoral elections.<sup>11</sup>

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<sup>7</sup> See PACE Resolution 1305 (2002), para. 5.i; Resolution 1456 (2005), para. 9; Resolution 1545 (2007), para. 6.5; Resolution 1614 (2008), para. 17.1.4; Resolution 1750 (2010), para. 6.

<sup>8</sup> Congress of Local and Regional Authorities, "Recommendation 126 (2003)1 local and regional democracy in Azerbaijan", 21 May 2003, [https://wcd.coe.int/ViewDoc.jsp?Ref=REC\(2003\)126&Language=lanEnglish&Ver=original&Site=Congress&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C](https://wcd.coe.int/ViewDoc.jsp?Ref=REC(2003)126&Language=lanEnglish&Ver=original&Site=Congress&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C).

<sup>9</sup> Council of Europe, press release 161(2009), <https://wcd.coe.int/ViewDoc.jsp?id=1413291&Site=COE>.

<sup>10</sup> Council of Europe Congress: Ian Micallef calls for election of the Mayor of Baku, 10 September 2009, <https://wcd.coe.int/ViewDoc.jsp?id=1498865&Site=DC>.

<sup>11</sup> "Baku - Only Capital City Among Countries of Council of Europe, Where Mayor Is Not Elected", *Azerireport*, 11 September 2009. [http://azerireport.com/index2.php?option=com\\_content&do\\_pdf=1&id=1595](http://azerireport.com/index2.php?option=com_content&do_pdf=1&id=1595)

## Restoring PACE's credibility

So what needs to change? Certainly, the resolution itself needs to be revised before it can be accepted. The very first sentence needs to be deleted:

“The Monitoring Committee recognises the progress made by Azerbaijan with regard to the establishment of the legislative framework in some areas crucial for the functioning of democratic institutions since its accession to the Council of Europe.”<sup>12</sup>

There has been no such progress. In fact, the report itself fails to provide any evidence for it.

A credible report also has to refer to the fact that of the main requirements that Azerbaijan committed in 2001 in the fields of domestic law, human rights and fundamental freedoms very few have been (somewhat) fulfilled. In most of the other areas, the situation in recent years has deteriorated.

*Table: Azerbaijan's unfulfilled obligations<sup>13</sup>*

Area	Situation
Guarantee freedom of expression	Critical journalists are <i>harassed and attacked</i> .
Amend Law on Media	Amendments <i>further restricting</i> freedom of the media passed
Create independent public TV	Public TV Ictimai, created in 2005, is <i>as pro-government as state TV</i>
Release political prisoners	Continued <i>arrests for political reasons</i>
Prosecute members of the law enforcement bodies involved in torture	<i>No members</i> of law enforcement have been prosecuted for torture in Azerbaijani courts
Strengthen local government	Powers of local government <i>very limited</i> ; Baku has no elected mayor
Strengthen the independence of the legislature	<i>Extremely weak parliament</i> ; no oversight over the executive
Amend the law on the bar	Growing number of attorneys who defended opposition figures were <i>disbarred</i>
Create Ombudsman office	Key political institutions – including <i>presidency</i> – <i>do not fall under ombudsman</i>
Amend laws on registration of associations	Critical NGOs have seen their <i>licences revoked</i>
Adopt law on alternative to military service	Clear policy <i>not to introduce alternative service</i>
Revise laws on elections and Central Election Commission	All key points criticized in election law <i>unchanged</i>

In order to provide a picture of the overall developments over time, it would be desirable to include findings of earlier reports and then compare them with the current situation. Such an approach makes clear that there has not been any improvement, and in many areas a deterioration. If one takes the last comprehensive monitoring report on Azerbaijan (2007), it describes the same problems as today – the lack of dialogue between the government and the

<sup>12</sup> PACE, “The honouring of obligations and commitments by Azerbaijan” (Doc. 13084), by Pedro Agramunt and Joseph Debono Grech, 20 December 2012. Summary. <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileId=19243&Language=en>.

<sup>13</sup> According to PACE opinion 222 (2000), adopted 28 June 2000. <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/EOPI222.htm>.

opposition, a weak parliament, an unresolved problem of political prisoners, lack of independent media, and no track record of elections complying with international standards.<sup>14</sup>

### Pedro Agramunt's consistency

“We both agree that important progress in the democratization of the country has to be noted. We take note of the impressive legislative work accomplished by the Azerbaijani authorities with a view to bringing laws in conformity with Council of Europe standards.”

(Pedro Agramunt and Joseph Debono Grech:  
Information Note on Fact-Finding Visit in Feb. 2011)<sup>15</sup>

Pedro Agramunt, the lead author of this report, has long developed a strong passion for Azerbaijan.

In October 2003, when he was still only a substitute member of PACE, he was part of the assembly’s monitoring delegation to the October 2003 presidential elections. In November of that year he became a full member of PACE and in 2004 he lobbied hard to become a co-rapporteur for Azerbaijan. He failed, but travelled to Azerbaijan again in 2005 as part of PACE’s election observation delegation.

The 2003 elections were widely judged by most PACE members and other international observers as disastrous. As Andreas Gross, PACE co-rapporteur on Azerbaijan at the time, commented:

“Authoritarian practices like intimidation of voters, pressures on elections commissioners or clear bias of the media in favour of the ruling party’s candidate were again observed during the 2003 election. In a member state of the Council of Europe, which has been independent for more than 10 years, such practice is unacceptable.”<sup>16</sup>

In January 2004 PACE adopted a harshly worded resolution, highlighting “intimidation of voters,” “arbitrary arrests” of opposition supporters, and a “clear bias” on the part of the press. It condemned “excessive use of force” by security forces. The resolution appealed to the newly elected president Ilham Aliyev to “speedily initiate the necessary reforms in the field of pluralistic democracy, rule of law and respect for human rights.”<sup>17</sup> The OSCE/ODIHR final report listed “widespread intimidation in the pre-election period,” lack of legal remedy for election disputes and complaints and serious flaws in the vote counting and tabulation process. The report concluded that the vote “failed to meet OSCE commitments and other international standards for democratic elections.”<sup>18</sup>

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<sup>14</sup> PACE, “Honouring of obligations and commitments by Azerbaijan” (Doc. 11226), by Andres Herkel and Tony Lloyd, 30 March 2007, Summary.

<http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=11649&Language=EN>

<sup>15</sup> Pedro Agramunt and Joseph Debono Grech, “Honouring of obligations and commitments by Azerbaijan. Information note by the co-rapporteurs on their fact-finding visit to Baku (1-3 February 2011)”, 12 April 2011. <http://assembly.coe.int/CommitteeDocs/2011/amondoc07rev.pdf>.

<sup>16</sup> PACE, “Functioning of democratic institutions in Azerbaijan” (Doc. 10030), 12 January 2004, paragraph 5.ii.

<sup>17</sup> PACE Resolution 1358 (2004), adopted 27 January 2004.

<sup>18</sup> OSCE/ODIHR, “Republic of Azerbaijan Presidential Election 15 October 2003. OSCE/ODIHR Election Observation Mission Report”, Warsaw, 1 November 2003, p. 1. <http://www.osce.org/odihr/elections/azerbaijan/13467>

The 2005 elections were even worse. Co-rapporteur Andreas Gross stated:

“The worst thing that could happen has happened. By their irresponsible actions the rulers killed the democratic hope among people. Nobody believes anymore that any positive changes are possible in this country.”<sup>19</sup>

The respective PACE resolution pointed out that

“the most unacceptable violations found by the ad hoc committee which observed the elections were: intimidation and arbitrary arrests of opposition candidates and supporters; impediments to the right to peaceful assembly; disproportionate use of force by the police in dispersing unauthorised rallies; interference of local authorities in the electoral process; abuse of administrative resources; ballot stuffing; and serious violations during the counting and tabulation of results. The media bias and the lack of impartiality of the election commissions also contributed to creating unfavourable conditions for free and fair elections.”<sup>20</sup>

The post-election resolution was blunt in its assessment:

“The way the November elections were conducted clearly shows that there is a persistent failure by Azerbaijan to honour its commitments to the Council of Europe. This must be sanctioned.”

Yet all this did not discourage Pedro Agramunt. He was one of a small group of people who made their way to observe the 2009 referendum. In June 2010 he finally achieved his ambition to become co-rapporteur on Azerbaijan. In November 2010 he went back to Azerbaijan twice as part of the election monitoring team, both on a pre-election visit and on election-day.

Given Agramunt’s great interest in the country and his profound knowledge, having observed it closely from the very beginning of Ilham Aliyev’s election as president in 2003, what informed his assessment of the situation in Baku? After all, whenever asked to describe developments in Azerbaijan, Agramunt’s message was that things were more or less going fine.

International human rights groups, the Venice Commission, and many MPs in PACE had been very critical of the 2009 referendum which lifted term-limits of Azerbaijan’s president. This did not prevent the four-person PACE mission in which Agramunt took part (incidentally, all its members had a reputation of supporting the Azerbaijani authorities<sup>21</sup>) from concluding that “the result of the referendum shows the willingness of the people of Azerbaijan to have greater stability and elements for further democratisation” and that “some amendments, undoubtedly, constitute important improvements to the Constitution.”<sup>22</sup>

Before the November 2010 elections, Agramunt told another PACE election observer in Baku that “this is a very good country and elections will be good.” From someone who had

<sup>19</sup> “The killed hope”, interview with Andreas Gross. Bakinskiye Vedomosti, no. 33 (1453), 26 November 2005. <http://www.andigross.ch/html/site444.htm>.

<sup>20</sup> PACE Resolution 1480 (2006), adopted 25 January 2006.

<sup>21</sup> The other three members were Paul Wille, Eduard Lintner, and Hakkı Keskin.

<sup>22</sup> PACE, “Azerbaijani people vote positively, says PACE delegation present at constitutional referendum”, 19 March 2009, [http://assembly.coe.int/ASP/NewsManager/EMB\\_NewsManagerView.asp?ID=4477](http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4477).

observed both the 2003 and 2005 elections, such a statement was certainly surprising. In 2011 Agramunt and Debono Grech wrote after a fact-finding visit:

“We both agree that important progress in the democratization of the country has to be noted. We take note of the impressive legislative work accomplished by the Azerbaijani authorities with a view to bringing laws in conformity with Council of Europe standards.”<sup>23</sup>

A key to understanding Agramunt’s behaviour is his speech and vote on 3 October 2012. On that day PACE voted on whether the Council of Europe would accept a definition of “political prisoner” proposed by rapporteur Christoph Straesser. Without a definition there could be no vote on Straesser’s report on political prisoners in Azerbaijan (also to be debated in PACE on 23 January). Azerbaijani officials had argued for years that such a definition was crucial and a precondition for meaningful work on political prisoners. In an open letter to the Norwegian Ambassador to Azerbaijan, Elkhan Suleymanov, a leading Azerbaijani MP also member of PACE, wrote in October 2011:

“For more than two years the Azerbaijani Delegation to the Council of Europe is asking to start within PACE an open and transparent debate on those criteria, unfortunately without success. Some NGO’s, together with Azeri opposition parties, by all means want to avoid this debate and appeal on foreign countries and their ambassadors to give them support, not to have this open debate.”<sup>24</sup>

In January 2012, Suleymanov argued,

“Never an international organization held a debate on defining the criteria of who is and who is not a ‘political prisoner.’ So somebody should finally do that. As the Council of Europe is known as the ‘conscience of Europe,’ it belongs to the core-business to elaborate this kind of issues. But they don’t.”<sup>25</sup>

It was only when Straesser actually did put a definition before PACE for a vote on 3 October 2012 that the Azerbaijanis changed position. Instead of supporting what they had demanded for years, they now proposed an amendment stating that PACE should not and could not get into the business of defining concepts like this or even judging the human rights situation in its member countries. An amendment backed by Azerbaijani and Russian MPs was put forward on 3 October. It read:

“The Parliamentary Assembly confirms that the interpretation and application of any criteria defining a political prisoner are the exclusive competence of the European Court of Human Rights, which is *the only authority to assess violations of fundamental rights*

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<sup>23</sup> Pedro Agramunt and Joseph Debono Grech, “Honouring of obligations and commitments by Azerbaijan. Information note by the co-rapporteurs on their fact-finding visit to Baku (1-3 February 2011)”, 12 April 2011. <http://assembly.coe.int/CommitteeDocs/2011/amondoc07rev.pdf>.

<sup>24</sup> Elkhan Suleymanov, “To the attention of Mr. Erling Skjønsberg, the Ambassador of Norway to the Republic of Azerbaijan”, Open letter, October 2011.. <http://elkhan-suleymanov.az/en/news/115-to-the-attention-of-mr-erling-skjshnsberg-the-ambassador-of-norway-to-the-republic-of-azerbaijan.html>.

<sup>25</sup> Elkhan Suleymanov, “It was even suggested in the committee that Mr Straesser should resign and be replaced by another rapporteur,” Joint Working Group for the Implementation of International Human Rights Standards, 30 January 2012. <http://www.humanrights-jwg.org/eng/press/news/693-elkhan-suleymanov-it-was-even-suggested.html>.

*and freedoms, as stipulated in the European Convention for Human Rights and its Protocols.”<sup>26</sup>*

It was an extraordinary proposal. Veiled in the affirmation of the work of the European Court of Human Rights, the amendment if adopted would have effectively shut down much of the work of PACE. If only the Court but not the parliamentary assembly had the authority to assess violations of fundamental rights and freedoms, what need was there for committees evaluating human rights issues? What would a monitoring committee then do? Wouldn’t the position of rapporteur become fully meaningless? Straesser and others fully understood these implications and made their concern very clear in the 3 October debate.<sup>27</sup> Andres Herkel, a former rapporteur on Azerbaijan from Estonia, stated that the amendment “seems to have the sole aim of destroying the report.” Straesser himself pointed out:

“If this position were adopted members might as well go home … I urge the Assembly not to emasculate itself.”

And Pedro Agramunt? In 2009 he had tabled a motion calling for the appointment of a rapporteur on the definition of political prisoners “as soon as possible.”<sup>28</sup> On 3 October 2012, Agramunt “agreed with the other speakers who had said that this matter has been dealt with over-hastily by the Assembly. Haste in politics is a poor counsel; the implications of this report should have been debated at some length, but this had not been the case.”<sup>29</sup> He and his co-rapporteur Debono Grech both voted in favour of the proposed amendment. In the end the amendment was defeated in an extremely tight vote of 89 to 89.

This was the latest and most blatant illustration of Agramunt’s approach to Azerbaijan and his understanding of the role of monitoring. But how is it logical to vote for an amendment rendering rapporteurs irrelevant and yet remain a rapporteur at the same time?

It would be better for Pedro Agramunt to resign from his position as PACE’s rapporteur for Azerbaijan, rather than stay in this position until 2015. Such a step would also allow Council of Europe monitors to again play a meaningful role in Azerbaijan. Azerbaijan has never needed a credible monitoring procedure more than now.

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<sup>26</sup> PACE, Verbatim transcript of the debate on 3 October 2012 at 3.30 pm., <http://assembly.coe.int/Main.asp?link=/Documents/Records/2012/E/1210031530E.htm>.

<sup>27</sup> For the subsequent quotes of this debate see: PACE debate on 3 October 2012, <http://assembly.coe.int/Main.asp?link=/Documents/Records/2012/E/1210031530E.htm>.

<sup>28</sup> PACE, Motion for a resolution, “The definition of political prisoners”, 19 May 2009, <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileId=12704&Language=EN>.

<sup>29</sup> PACE debate, 3 October 2012 at 3:30 pm., <http://assembly.coe.int/Main.asp?link=/Documents/Records/2012/E/1210031530E.htm>.

**ESI publications on Azerbaijan**

ESI Facebook picture story: Ilham the Magician and the Council of Europe – Or: how (not) to make the problem of political prisoners disappear (1 October 2012)

Caviar Diplomacy. How Azerbaijan silenced the Council of Europe – Part One (24 May 2012)

Generation Facebook in Baku – Adnan, Emin and the Future of Dissent in Azerbaijan (15 March 2011)