

*Ministers' Deputies*  
CM Documents

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## **850 Meeting, 3 September 2003**

2 Political questions

### **2.4 Monitoring Group (GT-SUIVI-AGO) – 3rd Progress Report**

[Item prepared by the GT-SUIVI-AGO]

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#### **I. BACKGROUND**

1. At their 799th meeting (June 2002, item 2.3), the Deputies were given the second progress report on GT-SUIVI.AGO's work on Armenia's and Azerbaijan's honouring of commitments. The report covered the period from July 2001 to June 2002.
2. On that occasion the Deputies asked Armenia and Azerbaijan to redouble their endeavours to honour all the commitments undertaken on accession and to involve the political forces and the citizens in this reform. They also noted that GT-SUIVI.AGO would be continuing the specific monitoring procedure for Armenia and Azerbaijan.
3. The Group continued its work under the chairmanship of the Italian ambassador, Mr P.E. Ago, with the same membership (Austria, France, Georgia, Germany, Greece, Italy, Latvia, the Netherlands, Romania, the Russian Federation, Sweden, Switzerland and Turkey) and employing the same methods (sending questionnaires on commitments, each questionnaire being prepared by two rapporteurs assisted by the Secretariat; see Appendix I). Representatives of Armenia and Azerbaijan were invited to attend part of the work.
4. During the reference period the Group held seven meetings. Three questionnaires were sent to the Armenian and Azerbaijan authorities, on 4 December 2002, 12 March 2003 and finally on 24 June 2003. The replies from the two countries reached the Secretariat on 14 February 2003 and on 20 May 2003. The Group is waiting for the replies to the last questionnaire by 20 September 2003. The questionnaire of 24 June prepared the ground for the visit which a delegation from the Group made to the region from 7 to 12 July 2003.

5. The delegation was composed of the Chair, Mr P.E. Ago, Permanent Representative of Italy, and Ambassadors Gilles CHOURAQUI (France) – Azerbaijan only, Athanassios THEODORACOPOULOS (Greece) – Azerbaijan only, Johannes LANDMAN (Netherlands), Gheorghe MAGHERU (Romania), Mats ÅBERG (Sweden), Jean-Claude JOSEPH (Switzerland), and Numan HAZAR (Turkey).
6. The delegation was in Armenia from 6 to 8 July and Azerbaijan from 9 to 11 July. It met representatives of each country's government and parliament, opposition parties, NGOs, local ambassadors of Council of Europe member countries and the OSCE representatives. In Baku, it also met the ODIHR pre-electoral evaluation mission. For the programme of the two visits, see Appendix II.
7. The members of the delegation wish to thank the authorities of both countries for facilitating the visit thanks to excellent organisation and a constant concern for co-operation. The questions at issue were discussed frankly and constructively, with the Group's role being viewed positively by the authorities of both countries. The visit was an opportunity to discuss in detail the outstanding problems and the Group hopes that fresh impetus can be given to democratic reform in both countries.
8. Lastly they wish to thank Mr Marco Clemente, the Italian Ambassador to Armenia, and Ms M. Costa, the Italian Ambassador to Azerbaijan, who, with the Council of Europe representatives, Ms Voutova and Ms Aarnio-Lwolff, co-ordinated the delegation's visit to Yerevan and Baku.

## II. GENERAL CONCLUSIONS

9. In both countries, progress has been halted for almost 18 months. The Group had already expressed its concerns in this respect following its visit in June 2002 and in the most recent questionnaire sent to the authorities of both countries. This standstill and lack of progress on a number of sensitive issues raises a serious problem with regard to the honouring of commitments.
10. The Group's concerns are broadly shared by the Parliamentary Assembly and the Assembly's September part-session could be crucial for both countries if there is no substantive progress on fundamental questions such as the total, *de jure* abolition of the death penalty in Armenia and the release of political prisoners in Azerbaijan. For its part, the Group stressed the need for significant and tangible progress by autumn. For the majority of the matters raised, it has received assurances from the authorities and it now expects that these promises will be fulfilled.
11. The authorities in both countries made it clear that the dates of the elections have had and continue to have an impact on progress in honouring commitments. While two elections (presidential and parliamentary) have taken place in Armenia in the period between February and May 2003, along with a referendum on constitutional amendments, and preparations are under way for presidential elections in Azerbaijan, the fact is that the slower rate of democratic progress significantly predates the period in question.
12. The lack of progress can be accounted for to an equal degree by the complexity of the problems which still have to be solved and which concern the very foundations of the structure of both states. The authorities appear to find it difficult, in terms of both drafting appropriate legislation and in practice, to address matters relating to the separation of powers. The independence of the legislative, the judiciary and the media appears to be perceived as a threat to power which lies mainly – in both countries – in the hands of the respective presidents.
13. This is borne out by the fact that in these fundamental fields, legislation has either not been adopted (for example, the laws on Radio and Television Broadcasting) or has been amended prior to being passed with the result that the Council of Europe's recommendations – on sensitive points – were not taken into account.

14. While this reluctance vis-à-vis the separation of powers might be the consequence of decades of a totalitarian regime and the recent history of these two young states, this does not change the fact that it is incompatible with the functioning of a democracy and membership of the Council of Europe. The Group urges the highest authorities in both countries to effectively address this question which concerns key areas of the commitments which they entered into.

15. In both countries there is a dangerous distrust of those in power, whose very legitimacy is challenged by the opposition and NGOs. The harassment, verbal and physical attacks and arrests to which members of the opposition, NGOs and press bodies are subjected are quoted as being signs of an illegitimate power which does all it can to stay in power and not share it. It is essential to restore trust and engage in genuine political dialogue with the opposition forces to enable the institutions to function properly.

### III. ARMENIA

16. The Group was obliged to conclude that since its last visit, practically no progress had been made. It could only confirm the lack of progress already noted in June 2002 concerning the honouring of commitments. At the time, this had been attributed to the fact that there had been no referendum on the constitutional amendments prior to the 2003 elections. Following numerous postponements, this referendum was eventually held at the same time as the presidential elections in May 2003 resulting in rejection. There is now an urgent requirement for remedial measures as it would be very difficult to accept postponement of the reforms for yet another year.

17. The delegation was struck by the tense climate among the political community and in civil society. Both elections which have just taken place, in which there were numerous irregularities, have given rise to a harsh rejection of the authorities in power. The President's legitimacy is challenged by the opposition, part of which refuses to co-operate in any way whatsoever. The NGOs have also voiced their lack of faith in the institutions (the President and parliament) they consider to have been unlawfully elected. They expressed their regret that the Monitoring Group had not been more severe, and had merely noted that the elections had not complied with European standards without taking any firm action.

18. For their part, the authorities said that they intend to take specific strong measures to avoid a repetition of such elections. They say they wish to amend the Electoral Code in liaison with the Venice Commission and are working on a training and awareness-raising programme for staff involved in the election process. The Group cannot but encourage them along this path, but urges that they take account of all the Venice Commission's recommendations without exception.

19. Furthermore, the authorities have said that they intend to draw up and implement an emergency plan to offset the rejection of the constitutional amendments, which was a significant blow to efforts to honour the commitments entered into by Armenia. A new referendum is planned for next year and the Group stressed that two and half years after the country's accession, it is now imperative that progress in the honouring of commitments be made. It emphasised the need to formulate new draft constitutional amendments together with the opposition and to launch a wide-scale information campaign well before the date of the referendum. Proposals along these lines and a roadmap setting out transitional measures relating to the various commitments for which the provisions of the Constitution have an impact (see paragraph 20 below) will be discussed in September between representatives of the Secretariat and of the Armenian authorities.

20. It is now essential to find some pragmatic solutions in respect of several commitments where progress was delayed pending the referendum. These are:

- o The law on the Ombudsman: The latter is appointed by the President but, in this connection, a broad interpretation of the Constitution is clearly possible pending a constitutional amendment. The draft law, which must once again be submitted to the Council of Europe, must take account of this.
- o Independence of the judiciary and appointment of judges: Transitional measures guaranteeing the independence of judges must be found.

- The Law on the Media and the law on Radio and Television Broadcasting: The latter bill is unsatisfactory as regards the provisions for the membership of the radio and television supervisory boards. Both texts must be sent to the Council of Europe for an expert opinion and once again interim measures must be put in place.
- The status of Yerevan and the appointment / election of its mayor: The final version of the Local Self-Government Act takes no account of the comments of the Council of Europe experts and should be revised. The status of Yerevan must be studied closely in this context.

21. The delegation also placed considerable emphasis on the need for *de jure* abolition of the death penalty and for Protocol No. 6 to the ECHR to be ratified as quickly as possible. This matter will be the first to be addressed by the new parliament in September and Protocol No. 6 should be ratified before the Assembly's part-session. The Group noted, however, that there is far from unanimity on this issue with several members of the opposition in parliament taking the view that it is at present too early to abolish the death penalty.

22. There are several other problems which, despite the passage of time, have not yet been resolved but now must be. They are:

- The frequencies to be allocated to the independent TV companies, particularly A1+ and Noyan Tapan: the call for tenders due to be held before the elections was repeatedly postponed. The National Radio and Television Board finally looked at the bids from 7 companies for the use of 5 frequencies on 14 July. Its decision, announced on 18 July, once again rejected the bids from A1+ and Noyan Tapan TV. NGOs have stated that there is a plurality of sources in the press sector (newspapers being read by 20% of the population) but that such is not the case for TV.
- The introduction of a defamation clause in the Criminal Code, criticised by both the OSCE and the Council of Europe, has given rise to considerable concern among journalists. The Group did not receive a satisfactory answer on this point.
- 20 conscientious objectors remain in prison and it would appear that an instruction (NO 551-A) authorises the dismissal of civil servants in the Ministry of the Interior who belong to a religion other than the Armenian Orthodox Church. The Group has not received any reply concerning the first matter and it is awaiting confirmation of the annulment of the decree as regards the second.

#### IV. AZERBAIJAN

23. The Group found the same situation in Azerbaijan as in Armenia with regard to the lack of progress. This is compounded by a very tense climate prior to the election campaign for the presidential elections to be held on 15 October 2003. The Group welcomed the adoption in May 2003 of the new Electoral Code which is an undeniable improvement on the old text and which should make it possible to organise transparent and democratic elections.

24. Nonetheless, even the best law is only as good as the way it is applied and – given the anomalies noted by the Group during its visit – it cannot but urge the authorities to avoid any dysfunctioning of the campaign and the elections themselves. There were numerous irregularities in the parliamentary elections held in 2000 and the international community would find it incomprehensible that nearly three years after the country's accession to the Council of Europe the presidential elections could be held in the same manner.

25. Moreover, this would appear to be the position of the authorities who have expressed their commitment to do all they can to ensure that the elections are “better than those of our neighbours” and comply fully with European standards. However, this presupposes that certain problems currently surfacing are dealt with as a matter of urgency.

26. First of all, there is a need to clarify the link between the candidature of Heydar Aliyev, presented by the New Azerbaijan Party and that of his son Ilham, presented by an association. This simultaneous "family" candidature is clearly a result of uncertainties about the health of Heydar Aliyev, who, at the time this report was being drafted immediately following the Group's visit, was in hospital in Turkey, and it is expected that one of them will withdraw just before the campaign begins. This move is generally interpreted as a clear indication that President Aliyev's camp wishes to retain power at all costs.

27. While of course distancing itself from the debate on the merits of the candidates, the Group was not at all convinced by the reasons given by the Central Electoral Board for the rejection of the candidature of Rasul Guliev, the former speaker of parliament, in exile in the United States and one of the few candidates capable of obtaining many votes, particularly as a totally different set of reasons for this rejection was given the same day to the OSCE pre-election observation mission. The refusal to accept the candidature of Rasul Guliev has been criticised by the opposition – united in its request for the decision to be reconsidered – and by the NGOs. The delegation urged the Central Electoral Board to review this decision, based on such tenuous, technical and apparently spurious grounds, which could undermine the whole process from the very outset. It also informed the representatives of the presidential administration of its concerns about this decision which did not augur well for the future.

28. This decision, moreover, was taken by a Central Electoral Board, whose composition is unsatisfactory, since no account was taken of the recommendations of the Venice Commission and an automatic majority was given to those currently in power. Most of the disputed decisions were taken by a majority of 10 votes for and 5 votes against, giving rise to considerable criticism from the opposition and the NGOs, added to which the positions of Chair and Vice-Chair of the Board are filled by members of President Aliyev's party. The Group stressed the need for a solution to be found, if appropriate by amending this provision in the law.

29. Furthermore, the opposition has complained that it is not always able to campaign freely and is subject to violence and aggression. For example, there have been reports of incidents during the gathering of signatures for candidates from the opposition, with the lists being destroyed and the identity papers of the party activists being confiscated. Opposition party members have been arrested and candidates have been vilified shamelessly in parliament. They are unable to move about without harassment. The Group calls on the authorities to take urgent measures to restore calm and ensure genuinely equal opportunities for all candidates in this election.

30. According to the Electoral Code, the minimum number of signatures required per candidate is 45,000; however, the Central Electoral Board arbitrarily set an upper limit of 51,000 signatures in excess of which the lists were no longer valid. The opposition fears cases of falsification when signatures are being verified. The Group has doubts about the legal foundation for this additional admissibility condition which does not appear in the Electoral Code.

31. With regard to the observation of elections, all those with whom the Group spoke – opposition parties, NGOs and the authorities – asked for the presence of a large number of international observers. The Group said that it would transmit this request to the Parliamentary Assembly. However, it expressed its surprise at the refusal to allow the elections to be observed by NGOs in receipt of foreign funding. This measure, which has been criticised from all quarters, should be reviewed in the light of the practices in other Council of Europe member states.

32. The Group stresses that these difficulties in the early part of the campaign can and must be resolved. It hopes that this will be the case, particularly as the authorities themselves claim to be convinced of the need for elections organised in conformity with European standards.

33. The delegation also emphasised that all candidates must have equal access to the media. This would appear to be problematic, particularly as the law on Radio and Television Broadcasting has still not been passed. State television has not become a public television service and the Supervisory Board does not comply with the impartiality and expertise criteria required by the Council of Europe. The speaker of the Milli Majlis has said that the bill will be put to parliament in the autumn and would enter into force at the end of the year. The Group finds it regrettable that this law has not been passed before the elections and suggests that the membership of the Supervisory Board be reconsidered on the basis of expertise and independence criteria.

34. The delegation also raised the question of violence and harassment against journalists, with some newspapers being given hefty fines or even being suspended (for example, the weekly publication "Monitor", which had already been subjected to printing obstruction in the past).

35. Reform of the status and appointment of judges is under way but advancing slowly. Little progress has been made and judges continue to be appointed by the President. The delegation stressed the importance of the independence of the judiciary, one of the cornerstones of democracy.

36. In this context, the Group also pressed for a copy of the analysis of the compatibility of the Azerbaijani legislation with Articles 6§2 and 6§3 of the European Convention on Human Rights. It would appear that this analysis is currently being translated and will be sent to the Council of Europe in the forthcoming weeks.

37. The question of the independence of the judiciary has a direct influence on the issue of political prisoners, particularly in the context of the retrials of the three key cases of Gumbatov, Gamidov and Gaziev. The trials of the first two have been completed; Gumbatov was reconvicted with the same sentence (life imprisonment) and Gamidov was given a custodial sentence which was three years shorter (11 years instead of 14). Gaziev's trial is still ongoing. In the view of the NGOs and observers, these trials did not conform to the requirements of Article 6 of the European Convention on Human Rights. Gamidov's counsel has informed the Group that he intends to appeal and in the case of rejection of the appeal, to submit an application to the European Court of Human Rights.

38. The delegation, which visited the 3 prisoners and several others, made it clear in their contacts with the authorities that the political prisoners' issue could give rise to a serious crisis with the Council of Europe and that it was absolutely imperative that substantive progress be made. It pointed out that all these individuals had been imprisoned during a troubled period which was now over and that it was time for reconciliation. It provided the authorities with a list of prisoners whose state of health necessitated their immediate release on humanitarian grounds. The prisoners in three pilot cases (Gamidov, Gumbatov and Husseyinov) appear on this list for immediate release. The Group highlights in this respect the case of Mr Suret Davud oglu Guseynov (case no. 17) who should undergo a thorough and extensive medical examination under the aegis of the Red Cross.

39. The Group also asked for the release of Mr Mirzoyev and Ms Kungorova, who had been convicted after the compilation of the list of 716 cases.

40. The authorities pointed to the guilt of these prisoners and the danger they posed for the security of the country, but they promised to reconsider the matter before the Assembly's September part-session.

## **V. NAGORNO-KARABAKH**

41. The Group discussed the question of a peaceful solution to the Nagorno-Karabakh conflict in both countries. It came to the conclusion that there had been no progress whatsoever on this matter. Nonetheless, it noted that there was a fundamentally different attitude towards the problem in Armenia and Azerbaijan.

42. In Armenia the question scarcely divides the political parties nor apparently public opinion. The authorities which, for the first six months of year 2003, faced a heavy internal electoral timetable, state that they are unwilling to take any initiative before the electoral process in Azerbaijan has also been completed.

43. In Azerbaijan on the other hand, the frustration of public opinion is increasing as the *status quo* is becoming permanent. It could become politicised in view of the presidential elections, with an intensification of appeals in favour of a liberation of occupied territories. This frustration provokes a more radical level of debate *vis-à-vis* Armenia and the international community – in particular the Minsk Group – being readily accused of not being more active.

44. In this context, the Group was accused of being concerned about the rights of political prisoners but not about the rights of approximately one million refugees and displaced persons, victims of the conflict. The Azerbaijani authorities also stressed that the honouring of international commitments could not be selective and that the Council of Europe should also be ensuring that human rights and the rule of law are upheld and that international law and the territorial integrity of its member states are complied with.

45. The Group can only encourage the Minsk Group to continue to work with the parties to the conflict to find a negotiated solution acceptable for all. It encourages the latter to be more active in the negotiations, underlining that time is not on the side of either party and that the maintaining of the *status quo* is not a solution.

46. While international assistance to find a solution to the conflict is a matter for the OSCE's Minsk Group, the Council of Europe must nonetheless closely monitor the situation. The commitment to find a peaceful solution to the conflict is one of the undertakings made by both countries. In the Group's view, this commitment is not limited to not taking up arms again but also implies active and sustained negotiation. It calls on both parties and their leaders to have the political courage to compromise.

47. It points out that if the solution were to be facilitated by a legal technical approach, the Council of Europe remains ready, in particular through its Venice Commission, to help the Minsk Group, at the request of the interested parties, in finding legal formulae for the status of Nagorno-Karabakh and for the protection of minorities.

## VI. FINAL REMARKS AND RECOMMENDATIONS

48. The Group acknowledges that democratic transition in both countries takes time, given the scale of the task facing both Armenia and Azerbaijan. They have to rid themselves of the legacy and habits of the past and build up a democratic society not only on paper but also in spirit. Many laws were drafted in the first year, but over the last 18 months progress has dwindled.

49. While that may be explained in part by the elections and the structural and political nature of the reforms still to be implemented, it is now high time for the authorities in both countries to be firm about directing their countries towards modernity. European integration requires the setting up of democratic states founded on the rule of law and the separation of powers. In this respect, there is an urgent need for courageous decisions and the Group is in no doubt that these will quickly be taken by the highest authorities in both countries.

50. The Group accordingly recommends that the Committee of Ministers:

- 1. ask the authorities of both countries to speed up the democratic reform and to make significant progress to fully honour all the commitments undertaken nearly three years ago on accession to the Council of Europe;**

- 2. ask the authorities of both countries to take rapid measures to solve all the problems mentioned in the 3rd progress report on the GT-SUIVI.AGO's work and underline the particular urgency of unconditionally abolishing the death penalty in Armenia and of resolving the question of all political prisoners in Azerbaijan in accordance with Council of Europe standards;**
- 3. ask GT-SUIVI.AGO to continue its monitoring work on the honouring of Armenia's and Azerbaijan's commitments and to present a new progress report in early 2004;**
- 4. forward the present report to the Parliamentary Assembly as part of dialogue between the Committee of Ministers and the Parliamentary Assembly on monitoring the honouring of commitments.**

**Appendix I****Distribution of Work within the GT-SUIVI.AGO**

<b>No.</b>	<b>Theme</b>	<b>Rapporteurs</b>
I.	Elections and Electoral law	Greece Romania
II.	Functioning of democratic institutions (political parties, relations between the Legislature, and Executive, Ombudsman, local democracy)	Russian Federation Austria
III.	Constitutional reform, legislation and ratification of the legal instruments of the Council of Europe	Georgia Latvia
IV.	Functioning of the judicial system, penitentiary system and conditions of detention	Switzerland Germany
V.	Freedom of the media, freedom of NGOs and freedom of religion	Sweden Italy
VI.	Political Prisoners	The Netherlands Turkey
VII.	Nagorno Karabakh	France Russian Federation Italy

**Appendix II**  
**(English only)**

**PROGRAMME FOR THE VISIT OF THE DELEGATION OF  
THE COUNCIL OF EUROPE "AGO" MONITORING GROUP  
TO ARMENIA AND AZERBAIJAN**

**6 - 12 JULY 2003**

**ARMENIA**

Sunday, 6 July

21:30 Arrival at "Zvartnots" International Airport  
Departure for the hotel "Yerevan" (14 Abovian Street, 375010 YEREVAN  
Tel: +374 1 589 400, 528 621;  
Fax: +374 1 564 677, 528 291  
e-mail: yerhot@arminco.com)

Accommodation, rest

Monday, 7 July

08:30 Breakfast hosted by Mr Marco Clemente, Ambassador of Italy to Armenia, with participation  
of Ambassadors of the Council of Europe member states, accredited to Armenia

09:55 Departure for the Ministry of Foreign Affairs

10:00-10:45 Meeting with Mr V. Oskanian, Minister of Foreign Affairs

10:50 Departure for the National Assembly

11:00-12:00 Meeting with the members of opposition parties represented in the National Assembly

12:00-12:40 Meeting with the Armenian delegation to PACE

12:40-13:10 Meeting with Mr A. Baghdassarian, Chairman of the National Assembly

13:15 Departure for the Ministry of Justice

13:20 Meeting with Mr D. Haroutunian, Minister of Justice

13:55 Departure for restaurant "Old Erivan"  
Lunch hosted by Mr D. Haroutunian, Minister of Justice

15:05 Departure for Council of Europe Office in Yerevan

15:15-16:00 Meeting with the representatives of NGO's

16:05 Departure for the Presidential Palace

16:15-17:05 Meeting with H. E. Mr R. Kocharian, President of the Republic of Armenia

17:10 Departure for the Ministry of Foreign Affairs

17:15-17:45 Joint press conference

17:50 Departure for the hotel, rest

18:30 Departure for the Lake Sevan

19:10 Official dinner hosted by Mr V. Oskanian, Minister of Foreign Affairs

Tuesday, 8 July

09:00 Breakfast  
 09:45 Departure for the Information Office of the Council of Europe  
 10:00-10:50 Official opening ceremony, reception  
 11:00 Departure for "Zvartnots" International Airport  
 11:30 Flight to Tbilisi

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**AZERBAIJAN**Wednesday, 9 July

18:50 Arrival at Bina Airport, Baku  
 Transfer to HYATT REGENCY HOTEL (Bakikhanov 1, BAKU  
 Tel: +994 12 98 12 34  
 Fax: +994 12 98 08 17  
 e-mail: reserv@hyatt.baku.az)

Thursday, 10 July

09:00 Meetings with members of the Diplomatic Corps  
 10:00 Meetings with representatives of NGO's  
 13:00 Lunch  
 15:00 Meeting with Mr A. Azimov, Deputy Minister of Foreign Affairs  
 16:30 Meeting with Mr V. Guliyev, Minister of Foreign Affairs  
 17:30 Meeting with Mr M. Panahov, Chairman of the Central Electoral Commission  
 18:30 Meeting with the Pre-electoral Evaluation mission of ODHIR  
 19:30 Dinner hosted by the Ministry of Foreign Affairs

Friday, 11 July

Morning Visit to Gobustan Prison  
 13:00 Lunch  
 14:00-15:00 Meeting with the representatives of the opposition parties represented in the Milli Majlis  
 16:00 Meeting with Mr M. Alasgarov, Chairman of the Milli Majlis  
 17:00 Meeting with Mr Ramiz Mehtiyev, Head of Office of the President of the Republic of Azerbaijan and with Heads of the relevant Divisions of the Executive Office  
 19:00 Dinner hosted by the Italian Ambassador in Baku

Saturday, 12 July

Departure