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Pablo Fernández Jiménez

# Is the Council of Europe Fostering Democratisation in Azerbaijan?

## Analysing the Impact of the Organisation and Its Faith in the Ballot Box

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## FOREWORD

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Like past editions, the selected theses demonstrate the richness and diversity of the EMA programme and the outstanding quality of the work performed by its students. On behalf of the Governing Bodies of EIUC and EMA and of all participating universities, we congratulate the authors.

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This publication includes the thesis *Is the Council of Europe fostering democratisation in Azerbaijan? Analysing the impact of the organisation and its faith in the ballot box* by Pablo Fernández Jiménez, and supervised by Prof. Florence Benoît-Rohmer, Université de Strasbourg

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## ABSTRACT

This paper examines the impact of the Council of Europe (CoE) in the process of democratisation in Azerbaijan, a member state where the organisation has failed to overcome the obstacles to democratic progress, legitimising a democratic façade. This case exemplifies the weaknesses and potential of the CoE, while the political and social context in Azerbaijan illustrates how conflict, natural resources, and geopolitics can challenge the progress of democracy. Both the country's underlying conditions and the organisation's internal weaknesses have been addressed in this paper, aiming to identify the obstacles and opportunities. After reviewing the CoE's strategy and actions, the need to move beyond the legitimisation of authoritarian practices and flawed elections, through a holistic and impactful monitoring system, has been highlighted. At a time of economic and social change in Azerbaijan, it is in the best interests of both the country and the CoE to co-operate to uphold democracy, human rights, and the rule of law.

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IS THE COUNCIL OF EUROPE FOSTERING  
DEMOCRATISATION IN AZERBAIJAN?

ANALYSING THE IMPACT OF THE ORGANISATION  
AND ITS FAITH IN THE BALLOT BOX

CEC	Central Election Commission
CM	Committee of Ministers of the Council of Europe
CoE	Council of Europe
Congress CoE	Congress of Local and Regional Authorities
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESI	European Stability Initiative
EU	European Union
GDP	Gross Domestic Product
IRFS	Institute for Reporters' Freedom and Safety
MP	Member of Parliament
NATO	North Atlantic Treaty Organization
NGOs	Non-governmental Organisations
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the CoE
SOCAR	State Oil Company of the Republic of Azerbaijan
UN	United Nations
US	United States
YAP	The New Azerbaijan Party

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## INTRODUCTION

This paper will analyse the development of the democratisation process in Azerbaijan, assessing the impact of the Council of Europe (CoE) and its different monitoring mechanisms, and examining the main achievements and failures of the organisation since negotiations for the accession of the country started in the 1990s. Primary and secondary source materials have been examined in order to identify the main obstacles which have prevented the consolidation of the democratisation process in Azerbaijan. The question which opens this paper can only be answered by looking at the role of the CoE in the country, where, theoretically, democratic institutions exist and elections are regularly held. However, as this paper will emphasise, these elements constitute a sort of 'façade democracy', which cohabitates with an authoritarian form of government.<sup>1</sup> The question will be addressed by identifying the geopolitical, economic and social factors, together with the internal weaknesses of the CoE, in order explain why democratic progress has not been achieved, despite its efforts.

The first section will look at the main political developments which took place in the country since it became independent from Soviet rule in 1991. Azerbaijan, located at the crossroads between Europe and Central Asia, is a door to the Caspian Sea, a major actor in the South Caucasus region, and an important player for the trade and energy routes between East and West; this makes it a pivotal geostrategic partner for Europe. It is also a Muslim-majority country, with a secular form of government and a fascinating history shaped by the different cultures which have

<sup>1</sup> Freedom House's 2015 Nations in Transit report concludes that Azerbaijan is very far from democratic progress and defines the regime as 'authoritarian'. Report last accessed online 15 June 2016, at <https://freedomhouse.org/report/nations-transit/2015/azerbaijan>

settled in the region. The country has a rich tradition of democratic politics and it established one of the first parliamentary republics in the Muslim world in 1918. However, after more than seven decades of Soviet rule, the current social and political context poses significant obstacles to the development of democracy. The unfinished process of post-communist transformation and democratic state building will be addressed at the beginning of the first chapter, illustrating some of these obstacles. Furthermore, the prominence of informal patronage networks, corruption, a centralised system, the limited space for the action of civil society and the country's 'resource curse', will also be examined as elements that have played a significant role hindering the progress of democratisation. All these multifaceted factors, among others such as the conflict over the region of Nagorno-Karabakh, will be addressed in the first and second chapters of this paper.

Together with the analysis of the country's political and social context, the role of the different mechanisms of the CoE present in Azerbaijan will also be examined, addressing the challenges and opportunities for the CoE to act as an effective watchdog for democracy and human rights. In 2000, a year before the country acceded to this organisation, the Parliamentary Assembly of the CoE (PACE) published an opinion (No. 222)<sup>2</sup> establishing clear benchmarks that the new member state was expected to meet. Fifteen years after accession, most of those ambitious recommendations remain unfulfilled. This paper attempts to explain why the Council has not been able to implement those objectives, and will look at the internal weaknesses which have prevented the organisation from fostering democratic change. The Council's 'transitional' strategy which has prioritised the conduct of elections, despite constant irregularities, will be analysed following the theoretical framework of the 'transitional paradigm', in order to assess progress and failures. The following chapters attempt to evaluate the contribution of the CoE and to analyse how it could impact the political and social realities of the country in a more effective way. Some information was found in the corridors of Strasbourg, through interviews with CoE officials that have worked closely with the mechanisms monitoring the progress of Azerbaijan. In addition to these interviews, other primary sources such

<sup>2</sup> PACE Opinion 222, 'Azerbaijan's application for membership of the Council of Europe', 2000.

as CoE official documents and resolutions have also been examined. Additionally, a wide variety of secondary source materials such as books and academic articles were also analysed.

The case of Azerbaijan exemplifies the difficulties for the CoE to fulfil its mandate: to improve the quality of democracy and justice, uphold human rights, and create a pan-European legal space. However, this case also illustrates the CoE's potential for action, if it manages to effectively address the new challenges for democracy throughout the continent by communicating its actions more effectively, improving the visibility of its monitoring mechanisms, and becoming a forum for high-level dialogue and democracy innovation. The last chapter will examine the windows of opportunity for the CoE to be a catalyst for democratic change in Azerbaijan. At a time of economic crisis, new opportunities for the promotion of democracy might arise. In the last 15 years, the relationship between the country and the organisation has been a two-way exercise in diplomacy, negotiations, and persuasion, where multifaceted interests have overshadowed the progress of democracy. This paper attempts to identify the missed opportunities but also the positive prospects for the CoE to effectively promote democracy, human rights, and the rule of law in Azerbaijan.

1.

THE ILLUSION OF TRANSITION: MISSED OPPORTUNITIES  
FOR COUNCIL'S ACTION

This first chapter will look at the different stages of the democratisation sequence in the country since it became independent in 1991. It will be divided into two parts, starting with the period prior to accession to the organisation (1991–2001) and followed by the post-accession period, from 2001 until now.

The first section will look at the different stages of post-communist transformation and state building, since the country became independent, focusing on the difficulties posed by the process of post-communist transformation. It will also address the most important milestones of the negotiation process, which concluded with the accession of Azerbaijan to the CoE in 2001.

The second part will look at the ‘missed opportunities’ for action of the CoE to foster democratic change since 2001. The section aims to identify the most significant events when momentum for democratic progress existed and to analyse the reasons that prevented the Council from exercising enough pressure and influence at the time. Ranging from the presidential elections in 2003 until the Azerbaijani Chairmanship of the CoE’s Committee of Ministers (CM) in 2014, this chapter aims to prove that transition remains incomplete and that the country is caught somewhere in the democratisation sequence.

1.1. ON THE RUN-UP TO MEMBERSHIP: DEMOCRATIC PROGRESS  
AND FAILURES BEFORE 2001

1.1.1. *Post-Soviet Transformation in the 1990s*

*'The Council of Europe made a conscious decision with the admission of former Soviet States: To be a non-confrontational environment for dialogue and to play a pedagogical role promoting democracy'.*

John Dalhuisen, London, 2011.<sup>3</sup>

During the first decade after Azerbaijan became independent in 1991, the complex process of post-communist transformation and the endemic Soviet practices of the Azerbaijani political elites posed important obstacles to the process of democratisation in the country. Despite the existence of momentum for democratic progress, or as some authors have described it, 'post-communist euphoria for democratic reform',<sup>4</sup> in the years before acceding the CoE, the complexities of the process of post-communist transformation, among other challenges, prevented the consolidation of a democratic system, and proved that the Azerbaijani society was not able to use the 'existing opportunities for democracy'.<sup>5</sup>

During the 1990s, the post-Soviet Republics were all departing from an institutional starting point which required a strong process of democratic state-building.<sup>6</sup> However, when some of these countries attempted to develop independent public institutions, they faced important obstacles, such as, severe institutional weakness, the dominance of informal networks such as clans and tribes, and the complexities of 'triple-transition': building democratic state structures while advancing towards a free-market economy.<sup>7</sup> Further sections of

<sup>3</sup> Henry Jackson Society Roundtable discussion: 'Azerbaijan: 20 Years of Independence and the Struggle for Democracy', October 2011. Summary accessed online 20 May 2016, at <http://henryjacksonsociety.org/2011/10/20/azerbaijan-20-years-of-independence-and-the-struggle-for-democracy/>

<sup>4</sup> Badalov, Rahman and Mehdi, Nizayi, 'The political institutions of Azerbaijan: a dichotomy between text and reality', p. 21 in International Institute for Democracy and Electoral Assistance (IDEA), 2005.

<sup>5</sup> Gulaliyev, Mayis, 'Political reforms in Azerbaijan (1989-2004)', in International Institute for Democracy and Electoral Assistance (IDEA), 2005.

<sup>6</sup> Furman, Dimitri, 'Imitation Democracies, The Post-Soviet Penumbra', *New Left Review*, 54, November 2008.

<sup>7</sup> Filetti, Andrea, 'Democratization or Authoritarian Stability? The different paths of

this paper will analyse how these ‘underlying conditions’ prevented democratic progress in Azerbaijan, challenging the so-called ‘transition paradigm’. Political, institutional, and economic legacies, are crucial elements to understand the process of state-building in 1990s Azerbaijan, where the post-communist context and the availability of natural resources undermined the development of a democratic transition.

Almost seven decades of Soviet rule in the South Caucasus resulted in political and social apathy, the absence of mobilisation at the local level, lack of social participation in politics, and scepticism towards democracy.<sup>8</sup> Several elections took place in the country before the accession to the CoE: presidential in 1992, 1993, and 1998; parliamentary in 1995 and 2000; and municipal in 1999, but there were multiple irregularities and a clear ‘resource imbalance among actors’, especially since President Heydar Aliyev came to power. ‘Substantial material incentives’ were available to reward supporters of the regime, while opposition forces were severely coerced.<sup>9</sup> This has been a constant feature in post-Soviet societies, severely undermining the plurality and diversity of the political debate. Notwithstanding the fact that electoral participation is traditionally used as a valid indicator in order to assess the political, social, and cultural environment in a given country, this might be a biased conclusion in the post-communist context, as high electoral participation ‘might not necessarily equate to real civic participation’, specifically in 1990s Azerbaijan.<sup>10</sup> The recent historical background of mass participation during Soviet rule in ‘clearly non-competitive elections’, is the best example of how electoral participation does not necessarily equate to progress towards democracy or the development of active citizenship. In order to achieve what Vladimir Gel’man calls ‘civicness’, social actors need to be truly independent from the state, and also from the immense economic power of the dominant elites. That was not the case in Azerbaijan during the late 1990s and neither is it today. Therefore, other factors beyond the traditional indicators of electoral participation should be taken into account in order to thoroughly analyse the ‘political culture’ of a society, for example

Georgia and Azerbaijan?’, p. 76 in OAKA, 2012.

<sup>8</sup> Cornell, Svante E, ‘Azerbaijan Since Independence’, Routledge, 2015

<sup>9</sup> Bunce, Valerie and Volchik, Sharon, ‘Azerbaijan’s 2005 Parliamentary Elections: A Failed Attempt at Transition’, p. 12 in CDDRL Working Papers, Number 89, September 2008.

<sup>10</sup> Gel’man, Vladimir, ‘Post-Soviet Transitions and Democratization: Towards Theory-Building’, p. 89 in Democratization, 10, no. 2, 2003.

‘political mobilizations such as demonstrations, or membership to civil society organisations’.<sup>11</sup> These elements have traditionally obtained very marginal support in Azerbaijan, due to the limited development of its civil society. Such context highlights the need to move beyond focusing solely on elections, to foster genuine democratic change.

During the process of post-communist ‘state-building’, the weakness of the country’s institutions was another crucial element which undermined the opportunities for the development of democracy and the rule of law in Azerbaijan, as the construction of a solid state structure never took place.<sup>12</sup> If the state is unable or unwilling to ‘ensure the principles of the rule of law’,<sup>13</sup> informal institutions will prevail, and this might result in the ‘arbitrary rule’ of dominant elites, which in the case of Azerbaijan is exemplified by the prominence of the Nakhichevan and Yeraz clans. These networks have supported President Aliyev since he came to power in 1993, playing a major role in the distribution of power and influence in the country. Clans, traditional, informal institutions, are pivotal elements in Azerbaijani political and social life, as they ‘shape and influence power structures’.<sup>14</sup> President Heydar Aliyev relied heavily on the support of the Nakhichevan and Yeraz clans to consolidate his power, and the same happened when his son Ilham Aliyev succeeded him in 2003. In Azerbaijan, political leadership is clan-based, and these structures are linked to regional and familial affiliations.<sup>15</sup> The Nakhichevan clan originated in an Azerbaijani region with the same name, where Heydar Aliyev was born, while Yeraz refers to a clan that comes from a region in Western Azerbaijan, now part of Armenia, where they still have family ties.<sup>16</sup> The backing of these two clans gave President Heydar Aliyev legitimacy and support, not only from the elites but also from below. They were pivotal actors contributing to the stability that enabled him to remain in power until

<sup>11</sup> Filetti, Andrea, *op. cit.*

<sup>12</sup> Ekiert, Grzegorz, Kubik, Jan and Vachudova, Milada Anna, ‘Democracy in the Post-Communist World: An Unending Quest?’, p. 7 in *East European Politics and Societies*, 21, 2007.

<sup>13</sup> Gel’man, Vladimir, *op. cit.* p. 97.

<sup>14</sup> Collins, Kathleen, ‘Clans, Pacts and Politics in Central Asia’, p. 138 in *Journal of Democracy*, vol. 13, no. 3, 2002.

<sup>15</sup> International Crisis Group, Report ‘Azerbaijan: Turning Over a New Leaf?’, p. 9, 21 May 2004.

<sup>16</sup> *Idem.*

his death.<sup>17</sup> These clans are still playing a central role in the political life of the country, shaping the power structure.

Despite the prominence of these informal institutions, which exercise *de facto* control, the formal institutions remain present, but mainly as a mere façade which serves to legitimise, internally and externally, the existing regime.<sup>18</sup> The process of state-building and the functioning of formal institutions was a priority during the negotiations for accession to the CoE. However, if we analyse the subsequent developments in the country, such strong and accountable state structures have never been in place. Informal networks remain extremely influential elements for the stability of the regime in power. According to Farid Guliyev, their prevalence might have created tensions with ‘western democracy promotion efforts’, as international actors possibly underestimated the relevance and level of influence of such informal networks. The prominent role of clans is considered by some authors as a direct result of a Soviet policy called ‘korenizatsiya’ (nativization), which incorporated different minorities into the administrative and institutional structures of the Soviet Union, through an assigned number of official representatives. The consequence of this policy was the strengthening of ‘networks based on regional and community affiliation’ in places like Azerbaijan.<sup>19</sup>

In such a context, the presidential system of government adopted by the Azerbaijani Constitution did not contribute to the development of diverse and independent political forces, which are pivotal in the transition process, but rather to the concentration of political and economic power in the figure of the president. In the post-communist context, those countries that adopted a parliamentary system with strong and diverse proportional representation, solid authorities at a local level, independent regulatory institutions and separation of power, have been much more successful in consolidating democracy.<sup>20</sup> None of these elements is present in Azerbaijan. The vast availability of natural resources, which will be thoroughly analysed in the second chapter of this paper, also benefited the elites in power, as they monopolised

<sup>17</sup> Filetti, Andrea, *op. cit.*, p. 80.

<sup>18</sup> Guliyev, Farid, ‘Post-Soviet Azerbaijan: Transition to Sultanistic Semi-authoritarianism? An Attempt at Conceptualization’, *Demokratizatsiya: The Journal of Post-Soviet Democratization*, vol. 13, no. 3, 2005.

<sup>19</sup> Filetti, Andrea, ‘Why so much stability? An Overview of the Azerbaijani Political System’, p. 163 in *Turkish Policy Quarterly*, 2013.

<sup>20</sup> Ekiert, Grzegorz, Kubik, Jan and Vachudova, Milada Anna, *op cit.*

the control of the country's oil and gas. According to some authors in the field of transition and democratic consolidation, there are no cases of a 'resource-dependent developing country making a successful transition towards democracy'.<sup>21</sup> The transformation towards a market economy while handling the availability of natural resources was a challenge for several post-Soviet republics, and highlighted the problematic relationship between economic indicators and the progress of democratisation. The process of modernisation which took place during the 1990s did not bring the democratic progress that experts in transition expected, but rather the consolidation of the elites in power.

After decades of Soviet rule, when Azerbaijan became an independent country in 1991, it suffered, like many other post-communist republics, from an identity vacuum. This feeling of uncertainty resulted in a quest for an identity that led to the rise of a strong nationalist sentiment, which was fostered by the rising tensions in Nagorno-Karabakh, with implications that will be analysed in the second chapter of this paper. As a response to the existing threats that the conflict posed to Azerbaijan's territorial integrity, politics were organised around ethnicity, and the Soviet tendency to personify power in a strong leader benefited the consolidation of President Heydar Aliyev.<sup>22</sup> This case exemplifies how conflict, with territorial and ethnic components, might serve as a tool for the elites to influence public opinion, diverting attention from other issues, such as the democratic deficit. Another element that attempted to fill the post-communist identity vacuum was religion. Despite the fact that the political structures have remained 'secular' after independence, Azerbaijan is a Shia-Muslim majority country, which experienced a significant religious revival in the post-Soviet context.<sup>23</sup> According to Cornell, the significant increase in Azerbaijan's religious sentiments was a response to the identity vacuum that the country experienced in the 1990s, and this is an element which also played a role in the process of transitioning towards democracy in the context of post-communist transformation. There were significant disparities in the democratic progress achieved within the different post-Soviet republics, from the

<sup>21</sup> Meissner, Hannes, 'The Resource Curse and Rentier States in the Caspian Region: A Need for Context Analysis', GIGA Working Papers, 133, May 2010.

<sup>22</sup> Petric, Boris, 'La Fabrique de la démocratie: ONG, fondations, think-tanks et organisations internationales en action', Colloquium, 2013.

<sup>23</sup> Cornell, Svante E, 'Democratization Falers in Azerbaijan', Journal of Democracy, vol. 12, 2001.

solid consolidation of democracy in the Baltic States to the opposite trend in Belarus or Kazakhstan. According to Dimitri Furman, two of the factors that explain these divergent performances are the religious and cultural backgrounds of each of those countries. Those with a western religious and cultural tradition, Lutheran or Catholic, performed better in the process of democratisation, compared to those with Orthodox or Muslim backgrounds, such as Azerbaijan.<sup>24</sup> However, this assumption underestimates the importance of geographical and socioeconomic elements that might have contributed to this trend.

The second part of this first chapter will go through the most important historical developments during the first decade of Azerbaijan's independence, analysing how they have shaped the political context, undermining the opportunities for democratic progress, while the country was negotiating its accession to the CoE.

### *1.1.2. The Main Political Developments During the Negotiations for Accession*

*'Some people think we should be able to establish democracy in a short time, but that's impossible. Azerbaijan is a young nation and democracy is a new concept. Democracy is not an apple you buy at the market and bring back home'.*

President Heydar Aliyev, Georgetown, 1997.

After almost seven decades of Soviet rule, Azerbaijan declared independence in 1991, and the second democratic experience in the country's history started just a year later, in June 1992, when democratic and fairly contested elections took place in the country.<sup>25</sup> The Popular Front's leader, Ebülfez Elchibey, was elected President of the Republic at a time of 'unprecedented civic activism'.<sup>26</sup> The Popular Front, founded in the 1980s by like-minded intellectuals as an anti-Soviet movement, advocated for the revival of Azerbaijani national consciousness, the country's independence, its territorial integrity, and the transition towards democracy and a market economy.<sup>27</sup> Nineteen ninety-two was

<sup>24</sup> Furman, Dimitri, op. cit.

<sup>25</sup> Commission on Security and Cooperation in Europe, 'Presidential Elections and Independence Referendums in the Baltic States, the Soviet Union and Successor States, A Compendium of Reports', p. 169, Washington, DC: CSCE, 1992.

<sup>26</sup> Cornell, Svante E, op. cit.

<sup>27</sup> European Stability Initiative (ESI), 'The country that Heydar Aliyev Built', 2001.

indeed a turning point that marked the beginning of the process of post-communist transformation, and the development of an emerging democracy, with western-oriented policies.<sup>28</sup>

This was not the first democratic experience of Azerbaijan; after the collapse of the Russian Empire in 1918, it became the ‘Azerbaijan Democratic Republic’. At that time, elections were held and the country became one of the first parliamentary democracies in the Muslim world. Even though this was a short experience, which only lasted for two years, it had the potential to influence the development of democracy in the following decades. According to Cornell, the progressive reforms which were implemented in 1918, laid the basis for democracy in the country and created significant momentum for a transition after Soviet rule.<sup>29</sup> The remarkable period between 1918 and 1920, among other unique features of the Azerbaijani culture, such as having developed the first Opera and western-style theatre plays in the Muslim world,<sup>30</sup> inspired the discourse, rhetoric, and actions of President Elchibey and the Popular Front when they took power in 1992. At the beginning of his mandate, Elchibey was quoted as saying, ‘I believed that as a country moving towards democracy we should have friendly relations only with other democracies. I wanted to sit face to face only with democrats, with human beings. We distanced ourselves from dictatorships, such as Iraq, Iran, and North Korea’.<sup>31</sup>

Despite the western-oriented discourse and ideology of the Popular Front, the democratic structures which were built during that period were never institutionalised,<sup>32</sup> as President Elchibey only remained in power for two years and he faced significant obstacles due to the complexities of the process of post-Soviet transformation and the political and social consequences of the conflict over Nagorno-Karabakh. The constant defeats against Armenia on the battlefield undermined the popular support for Elchibey’s policies. The conflict, which played a very important role ‘fostering national self-conscience’,<sup>33</sup> the economic crisis, and the lack of administrative experience of the newly elected

<sup>28</sup> Filetti, Andrea, ‘Democratization or Authoritarian Stability? The different paths of Georgia and Azerbaijan?’, p. 66 in OAKA, 2012.

<sup>29</sup> Cornell, Svante E, ‘Democratization Falts in Azerbaijan’, *Journal of Democracy*, vol. 12, 2001.

<sup>30</sup> *Idem.*

<sup>31</sup> European Stability Initiative Report, *op. cit.*

<sup>32</sup> Filetti, Andrea, *op. cit.*, p. 76.

<sup>33</sup> Guliyev, Farid, *op. cit.*, p. 414.

officials, posed important obstacles to the stability of the Popular Front government. Furthermore, Elchibey's foreign policy choices were also controversial, and undermined the country's stability, due to the complexities of the region. He was strongly against the political elites of both Russia and Iran, Azerbaijan's most powerful neighbours. This resulted in both countries adopting a 'confrontational stance vis-à-vis Azerbaijan', which increased pressure over Elchibey to leave power.<sup>34</sup> In June 1993, due to the worrying situation in Nagorno-Karabakh, Colonel Surat Huseynov and his men started to move towards Baku, in order to take control over the situation,<sup>35</sup> and this obliged Elchibey to hand over power to the former communist leader, Aliyev. Heydar Aliyev had previously ruled over Azerbaijan as a member of the Soviet 'nomenklatura'; he managed to stabilise the situation, beginning a second phase in the process of post-Soviet transformation and exemplifying the comeback to power of the former communist elite. He would remain in office until his death in 2003.

Heydar Aliyev consolidated his power after the 1993 presidential elections, which according to international observers did not fulfil minimum democratic standards, and therefore put an end to the two-year democratic experiment in the country.<sup>36</sup> According to official sources, Heydar Aliyev obtained 98.8 per cent of the vote, at a time when the country was going through a period of economic, political, and military instability. It is important to stress the fact that President Aliyev was perceived thereafter as 'the Father of the Nation', and he built his public image accordingly.<sup>37</sup> He was portrayed as a powerful leader able to defend Azerbaijan's interests and willing to protect them from the regional and geopolitical threats. In 1994, he signed a ceasefire agreement on the conflict over Nagorno-Karabakh, normalised relations with other regional powers, agreed to join the Russian-led Commonwealth of Independent States and also started to create ties with the West.<sup>38</sup> The process of transitioning towards a market economy advanced significantly in 1994 when Aliyev signed a contract with an international consortium of ten

<sup>34</sup> European Stability Initiative Report, op. cit.

<sup>35</sup> Caspersen, Nina, 'Regimes and peace processes: Democratic (non)development in Armenia and Azerbaijan and its impact on the Nagorno-Karabakh conflict', p. 134 in *Communist and Post-Communist Studies* 45, 2012.

<sup>36</sup> Cornell, Svante E, op. cit.

<sup>37</sup> Guliyev, Farid, op. cit., p. 417.

<sup>38</sup> European Stability Initiative Report, op. cit., 2011.

major companies from six different countries; this is known in Azerbaijan as ‘the contract of the century’. This agreement brought vast economic investment to the country, and this resulted in high growth rates and modernisation, all achieved through the revenues of oil production.<sup>39</sup> This resource-based economic progress was a very useful instrument for President Aliyev to achieve security and stability, and he combined this economic leverage with the support of his party (The New Azerbaijan Party, YAP) and the influence of the Nakichevan and Yeraz clans.

Since the very beginning of his mandate, President Aliyev used his foreign policy choices as a tool to consolidate the independence of the country and his own future in power. Among his top priorities was to build strong ties with the West and therefore he started negotiations with the CoE in 1993, in order to explore the possibility for accession. At that time, this endeavour became one of his main concerns in the field of international relations.<sup>40</sup> The main outcome of this growing relationship between Azerbaijan and the CoE was the ability of the organisation to ‘scrutinize the political developments in the country’ and to participate in the day-to-day process of institutional reform, which was intense at that time.<sup>41</sup> The CoE was able to influence the drafting of the country’s Constitution, which was approved in 1995 and envisaged the division of powers and the protection of fundamental freedoms. The Constitution was praised by international legal experts due to its protection of civil and political rights and liberties, however, as will be explored in this paper, the implementation of these democratic provisions granted by the norms has been highly problematic.<sup>42</sup>

In 1996, PACE recognised the ‘democratic’ progress in Azerbaijan, granting the country the status of ‘Special Guest’.<sup>43</sup> This development gave the Azerbaijani delegation the opportunity to participate in some committees, and the relationship between the organisation and the Republic intensified. Due to its status as ‘Special Guest’, Azerbaijan received several visits from CoE rapporteurs, who travelled there to

<sup>39</sup> *Idem.*

<sup>40</sup> Suleymanov, Elkhan, ‘Azerbaijan, 10 years member of the Council of Europe’, p. 9, 2011.

<sup>41</sup> Cornell, Svante E, ‘Democratization Falter in Azerbaijan’ p. 121 in *Journal of Democracy*, vol. 12, 2001.

<sup>42</sup> Interview with Deplhine Freymann, Secretary of PACE’s monitoring committee working in Azerbaijan, Strasbourg, 12 May 2016.

<sup>43</sup> Suleymanov, Elkhan, ‘Azerbaijan, 10 years member of the Council of Europe’, p. 10, 2011.

monitor the process of state-building, and the relations with the Council became, for the Azerbaijani delegation, an opportunity to familiarise themselves with European standards on human rights and democracy. The organisation wanted to play a pedagogical role, and an individual co-operation programme was implemented in order to foster several legal and institutional reforms, mainly related to the judicial system, aiming to bring the Azerbaijani legislation closer to European standards.<sup>44</sup> The lack of independence of the judiciary is still today one of the main obstacles for the rule of law in the country, despite the Council's efforts in this field.

In July 1996, the country applied for full membership to the CoE, and PACE appointed several rapporteurs in order to assess the conformity of Azerbaijan's democratic and legal performance against the standards of the organisation. Attempting to advance towards accession, the government of the Republic ratified several CoE Conventions, conducted reforms of the criminal code using the legal expertise of Council's experts, established an Appeal Commission and a Constitutional Court, and adopted new laws and a 'State Program on the protection of Human and Civil Rights and Freedoms'.<sup>45</sup> The abolition of the death penalty, which is a requirement *sine qua non* for becoming a CoE member state, was implemented in 1998, and several amnesty acts were signed. That same year, presidential elections took place in the country, and Heydar Aliyev won with 76 per cent of the vote.<sup>46</sup> The fact that the president was re-elected with such a high percentage raised questions regarding the level of competitiveness of the elections.<sup>47</sup> A PACE delegation observed the voting, as part of the monitoring of the pre-accession process, and identified the existence of some breaches of the law. However, the Council failed to exercise pressure on this issue, as the same irregularities took place in subsequent electoral processes before and after the country joined the Council.

In the years before accession, and still today, the lack of freedom of the press in Azerbaijan is one of the most serious obstacles to the development of a democratic society. Just before accession, the Council

<sup>44</sup> Idem.

<sup>45</sup> Suleymanov, Elkhan, op. cit., p. 13.

<sup>46</sup> Guliyev, Farid, op. cit., p. 429.

<sup>47</sup> Levitsky, Steven, and Lucan A. Way, 'The Rise of Competitive Authoritarianism', p. 50 in *Journal of Democracy* 13, no. 2 April 2002.

managed to put pressure on the authorities to make reforms and some progress regarding freedom of the press was achieved, mainly through the Presidential decree of 1998 on ‘Additional measures for the provision of the freedoms of speech, opinion, and information in the Republic of Azerbaijan’, and the 1999 Law on ‘mass media’. Censorship was banned, and freedom and independence of the press were therefore protected by the law. Despite these reforms, almost twenty years later, the obstacles for the development of independent media remain an acute challenge for the development of democracy in the country. Azerbaijan currently ranks 163 out of 180 in the Reporters Without Border’s Press Freedom Ranking.<sup>48</sup>

In the year 2000, the Political Affairs Committee of the PACE developed a Package of Recommendations which was presented to the country’s authorities and included five groups of liabilities that Azerbaijan should implement in order to achieve accession.<sup>49</sup> The first of these groups included the list of CoE conventions for the country to sign, the second looked at the steps to be taken in order to solve the Nagorno-Karabakh conflict, the third highlighted specific reforms to be implemented regarding national legislation, in areas such as local governance, and called for the adoption of laws on the institution of the Ombudsman and the fight against corruption. The fourth group introduced recommendations concerning the protection of human rights and basic freedoms, and the fifth established the framework for co-operation and monitoring. The Council encouraged Azerbaijan to utilise the expertise of the Venice Commission, in order to reform several legal provisions and develop new legislation, in accordance with the recommendations. The co-operation with the Venice Commission has been extremely difficult since those days, and some of the most pressing reforms identified by that body in 2000 have still not been implemented.

An example of this is the lack of independence of the judiciary, which despite the Council’s assistance and expertise, was not fully addressed and remains a major obstacle for equal access to justice in the country. Several loopholes can be found in the legislation developed at that time, which enable the authorities to interpret various provisions according to their own interests.<sup>50</sup> Another problem that was not effectively addressed

<sup>48</sup> Reporters Without Borders, ‘2016 World Press Freedom Index’, at <https://rsf.org/en/ranking>

<sup>49</sup> Suleymanov, Elkhan, *op. cit.*, p. 17.

<sup>50</sup> Badalov, Rahman and Mehdi, Nizayi, ‘The political institutions of Azerbaijan: a

in the run-up to accession was the extremely centralised system, with the president controlling the system without local authorities or functioning checks and balances. Efforts were made, but despite the fact that a law on municipal authorities was passed in 1999, and the fact that the Constitution prescribes the independence and importance of local self-governance, these norms were not fully implemented, and the whole political system remains under the effective control of the President of the Republic.<sup>51</sup> Therefore, democratic and legal reforms developed with the assistance of the CoE's experts in the first decade after independence from Soviet rule have left their imprint, however, due to the significant loopholes which enable unaccountable governmental action, their implementation after accession has not been satisfactory.

While negotiating with the CoE, in order to develop new legal and institutional structures, the government also stated a parallel transition towards a market economy. The availability of natural resources consolidated the economic growth, and President Heydar Aliyev and supporting clans controlled State Oil Company of the Republic of Azerbaijan (SOCAR), which also effectively meant controlling the country's economy.<sup>52</sup> Only a year before accession to the Council, in November 2000, parliamentary elections took place in Azerbaijan. Many were hopeful that the authorities would show their commitment to democracy by conducting free and fair elections, however, the observation team of the Organisation for Security and Co-operation in Europe (OSCE) concluded that the elections were, once again, 'flawed and manipulated'. Electoral observers appointed by PACE also found 'clear manipulation of the electoral procedures'.<sup>53</sup> Following these events, Human Rights Watch asked the CoE not to admit Azerbaijan as a member.<sup>54</sup> However, in November that same year, the CM officially invited the country to join the organisation, and Azerbaijan acquired membership status in January 2001.

As defined by Furman, the political and social developments in the

dichotomy between text and reality', p. 143 in International Institute for Democracy and Electoral Assistance (IDEA), 2005.

<sup>51</sup> Gulaliyev, Mayis, 'Political reforms in Azerbaijan (1989-2004)', p. 166 in International Institute for Democracy and Electoral Assistance (IDEA), 2005.

<sup>52</sup> Freizer, Sabie, 'Dynasty and Democracy in Azerbaijan', Open Democracy, 2003.

<sup>53</sup> European Stability Initiative, 'Caviar Diplomacy, How Azerbaijan silenced the Council of Europe,' p. 5, May 2012.

<sup>54</sup> *Idem* p. 6.

country during the 1990s fit into the category of imitation democracies: ‘a system which combines democratic constitutional forms with an authoritarian rule’.<sup>55</sup> Despite the establishment of formal institutions, legal reforms, or a solid Constitution that grants liberty and freedoms to its citizens, this progress is undermined by constant practices of electoral manipulation and other obstacles for the work of opposition parties and independent civil society actors. ‘An “imitation democracy” makes sure that there are not real alternatives to presidential power, and therefore controls media and elections.’<sup>56</sup> Furthermore, in the case of Azerbaijan, informal institutions shape political and social developments while formal institutions exist as a mere façade, an image which resembles democracy. The officials of the CoE were hopeful about the positive effects of membership on transforming imitation into reality. The events that will be described in the next section proved that their hope was in vain.

## 1.2. POST-ACCESSION PERIOD: A COUNCIL MEMBER CONSOLIDATING AUTHORITARIANISM

*‘Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council.’*

Chapter II, Article 3, Statute of the CoE.

Azerbaijan officially joined the ‘European family’ in 2001, when it acceded the CoE, and therefore, undertook the obligations to advance in the consolidation of democratic institutions, respect the rule of law, and uphold human rights.<sup>57</sup> The objective of the CoE is to gather European democracies in order to protect and advocate for human rights, providing assistance and outside scrutiny to foster the development of democracy and justice. Therefore, becoming a member of such an organisation was indeed an important window of opportunity for democratic progress in the country, and it also granted Azerbaijani citizens with the guarantee

<sup>55</sup> Furman, Dimitri, ‘Imitation Democracies, The Post-Soviet Penumbra’, *New Left Review* 54, 2008.

<sup>56</sup> Furman, Dimitri, *op. cit.*, p. 42.

<sup>57</sup> Aslan, Amani, ‘How Europe Failed Azerbaijan’, *Open Democracy*, 22 October 2013.

of access to independent justice, through the European Court of Human Rights (ECtHR), based in Strasbourg. For Aliyev's government, joining the organisation was a way to officially qualify as a democracy, and therefore, an instrument to improve its international profile. When acceding the CoE, all member states are expected to comply with the principles enshrined in the founding statute, in the European Convention on Human Rights (ECHR), and with other Conventions they choose to ratify. In order to assess this compliance, several monitoring mechanisms are in place from the moment of accession; these instruments will be analysed in relation to Azerbaijan, in this section. When considering an application for membership, there are basic requirements which all candidates should fulfil, as was highlighted during the Vienna summit 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 decisive criteria for assessing any application for membership.'<sup>58</sup>

Granting membership to Azerbaijan and other post-Soviet republics was a controversial issue in the late 1990s. However, the Council made a very conscious decision when opening its doors to the post-communist republics, as this was perceived as a valuable opportunity for the organisation to foster the so-called 'democratic wave' in Eastern Europe. Was there such a wave? Was Azerbaijan a democratic country, and therefore, eligible to join the CoE? Despite the negative developments which followed Azerbaijani accession, it seems that the decision to open the doors of the organisation to countries of 'Wider Europe', was a coherent decision for the organisation: the democratic transformation of post-communist countries was in accordance with the mandate of the CoE, and exemplified the added-value of the organisation, versus the narrower membership of the European Union.

The Council, with an inclusive vision of the European continent, aimed to be a forum for dialogue, and expected to contribute to the democratic transformation of Azerbaijan, displaying in the country its different monitoring mechanisms. However, the limited democratic progress in the first decade after independence, and the flawed elections which took

<sup>58</sup> Committee of Ministers, 'Vienna Declaration', 9 October 1993.

place in November 2000,<sup>59</sup> raised serious concerns regarding Azerbaijan's democratic credentials. Ambitious commitments, objectives, and recommendations dealing with democratic reforms were set in PACE's Opinion No. 222. Nevertheless, the majority of these objectives have not yet been achieved, as will be analysed throughout this paper. This section will review the most significant missed opportunities for the Council to exercise influence in the country, analysing why the organisation and its monitoring mechanisms were not able to benefit from the existing momentum for democratic progress on several occasions. Events like the 2003 presidential elections, the 2005 parliamentary elections, the 'colour revolutions', the 2013 PACE debates on political prisoners, and the 2014 Azerbaijani Chairmanship of the CM, were all moments which could have opened space for democratic reforms.

### 1.2.1. *The 2003 Presidential Elections: A 'Sultanistic' Succession*

*'The Parliamentary Assembly believes that the newly elected President must be given an opportunity to demonstrate his commitment to European democratic values and principles. As the former president of the Azerbaijani delegation to the Assembly, Mr. İlham Aliyev is familiar with the obligations resulting from his country's membership of the Council of Europe'.*

PACE Resolution 1358, point 2, 2004

When Azerbaijan acceded the organisation, different bodies of the CoE started to operate in the country, tracking progress and ensuring compliance with the established commitments. The core bodies of the CoE that observe and assist member states are: the ECtHR, the CM, the Human Rights Commissioner, the European Commission for Democracy through Law (Venice Commission), PACE, the Congress of Local and Regional Authorities (Congress CoE), and the Office of the Secretary General. One of the most active mechanisms that is still in place to assess Azerbaijan's performance is PACE's monitoring committee, which conducts in-country visits and appoints two rapporteurs to assess progress and develop recommendations.<sup>60</sup>

<sup>59</sup> OSCE Office for Democratic Institutions and Human Rights, 'Final Report on the Parliamentary Elections of November 5 2000', Accessed online 5 May 2016, at <http://www.osce.org/odihr/elections/azerbaijan/14265>

<sup>60</sup> Interview with Delphine Feymann, Secretary of PACE's monitoring committee working

During the first years which followed accession, Azerbaijan's current President, Ilham Aliyev, led the country's delegation to the PACE, and for this reason, when he was appointed by his father as his political successor in 2003, expectations in Strasbourg were high regarding his commitments to democracy and human rights. He was perceived as a moderate figure willing to implement democratic reforms. However, the strong presidential system and the limited opportunities for action by the opposition remained a strong obstacle for the implementation of a truly democratic system, and Ilham Aliyev was not as willing to make the reforms which many in Strasbourg had expected.<sup>61</sup> Furthermore, the process of state-building was incomplete, and the Azerbaijani parliament was not a real forum 'for democratic debate on issues of policy relevance', as it was effectively controlled by YAP and its allies.<sup>62</sup> The very limited opportunities for action by the opposition in parliament, and the lack of scrutiny over governmental actions, resulted, according to Sabine Freizer, in few opportunities for institutional dialogue between government and the opposition.<sup>63</sup> This situation did not change despite the efforts of the Council to open space for dialogue and to play a role as a neutral moderator.

As has been mentioned in previous sections of this paper, the lack of a strong and democratic institutional framework remains a severe challenge for democratisation in Azerbaijan, despite being a priority for the Council's action since the first years following accession. Civil society organisations desperately needed support from the CoE, as governmental obstacles were in place, undermining their work and funding. Notwithstanding several recommendations made by the Council, most of those obstacles are still present today, hindering the existence of an independent civil society. Non-Governmental Organisations (NGOs) face a difficult process of registration and severe limitations to get financial support from international actors.<sup>64</sup>

An important development that took place right after accession in 2001, was the reform of the electoral code, which was carried out with the assistance of the CoE through the expertise of the Venice Commission.<sup>65</sup>

in Azerbaijan, Strasbourg, 12 May 2016.

<sup>61</sup> Freedom House, Nations in Transit Report on Azerbaijan, 2003.

<sup>62</sup> Freizer, Sabine, 'Dynasty and Democracy in Azerbaijan', Open Democracy, 2003.

<sup>63</sup> Idem.

<sup>64</sup> Freedom House, op. cit.

<sup>65</sup> OSCE/ODIHR and CoE Venice Commission, Joint Final Assessment of the Electoral

Although this new electoral code was in line with European standards, the structure of Central Election Commission (CEC), the national body taking the most important decisions regarding elections,<sup>66</sup> was a controversial point during the negotiations prior to accession. Despite the efforts of the CoE, the CEC remains effectively controlled by the ruling YAP, and this severely undermines the legitimacy of the electoral process. In spite of the concerns expressed by the Venice Commission regarding the ‘lack of consensus and confidence of all major election parties over the composition of the body’, the government refused to make any further reforms.<sup>67</sup> Controlling the CEC is crucial for those in power in order to be able to legitimise flawed and manipulated electoral practices, and his explains why subsequent elections in Azerbaijan have been considered ‘fraudulent’ by OSCE’s observation missions. The CEC frequently prevents certain opposition candidates from registering, which proves that it does not operate independently.

In the run-up to the October 2003 presidential elections, there was significant momentum for democratic participation, and according to Sabine Freizer, the electoral campaign managed to engage large numbers of supporters from both sides, which exemplified the existence of opportunities for the development of an active civil society. However, according to a Human Rights Watch report, the political competition was limited as ‘governmental forces successfully prevented the opposition from getting its message across the nation’, using all kind of means.<sup>68</sup> One of the opposition candidates, Rasul Guliev, was denied registration by the CEC,<sup>69</sup> and this resulted in a significant number of protests which were broken up by police forces.<sup>70</sup> The opposition parties did not appoint a unifying candidate and running independently severely undermined their chances to succeed. The international attention resulted in hundreds of electoral observers travelling to the country, and many were optimistic about the opportunities of the handover of power.

The October 2003 presidential election was indeed an opportunity to assess the impact of the CoE in the democratic progress of the country,

Code of the Republic of Azerbaijan, Opinion no. 214/2002, 1 September 2003.

<sup>66</sup> Human Rights Watch, ‘Azerbaijan Presidential Elections 2003’, p. 5 in Human Rights Watch Briefing Paper, 13 October 2003.

<sup>67</sup> PACE Resolution 1480, 2006.

<sup>68</sup> Human Rights Watch, *op. cit.*, p. 2.

<sup>69</sup> *Idem*, p. 6.

<sup>70</sup> Freizer, Sabine, *op. cit.*

and also a chance for Azerbaijan to show its commitment to the values of the organisation it had recently joined. It was also the perfect occasion to conduct one of the ‘first democratic handover of presidential power in the post-Soviet Caucasus’.<sup>71</sup> However, none of these developments took place in Azerbaijan. Ilham Aliyev obtained around 77 per cent of the vote according to official sources, and according to the OSCE, ‘there were serious irregularities and efforts to cheat through ballot-box stuffing, pre-marked ballots, ballots without serial numbers, and multiple voting’.<sup>72</sup> Several incidents took place right after the results were announced and demonstrations were heavily repressed by police forces.<sup>73</sup> The election consolidated a dynastic succession, from father to son, the first of this kind in the post-Soviet space.<sup>74</sup> This situation had a very negative impact on the process of democratisation, as according to Farid Guliyev, this succession exemplified how power is perceived as ‘personal or familial, not belonging to political institutions’. Guliyev argues that the 2003 elections highlighted the prominence of ‘family, clans, and patronage’ over democracy and formal legal institutions, and therefore, a ‘sultanistic political regime’ was consolidated in Azerbaijan. The dominance and influence of the Yeraz and Nakhichevan clans was secured with the succession,<sup>75</sup> and tradition-based structures overshadowed formal institutions, placing the personality and power of the ‘leader’ at the centre of the political debate.

The electoral monitoring mission of PACE concluded that ‘serious fraud’ and numerous irregularities took place during the presidential elections, including ‘intimidation and arrest of voters and excessive use of force by security forces’. Such practices were described as ‘unacceptable in a member state of the Council of Europe’. A year later, in 2004, Resolution 4444 of the PACE called for the prosecution of those responsible for the electoral fraud, and for the ‘torture, inhuman treatment, and intimidation of members of the opposition, and their families and supporters, journalists and human rights activists’.<sup>76</sup> Despite

<sup>71</sup> *Idem.*

<sup>72</sup> OSCE, OSCE/ODIHR Election Observation Report on the Presidential Election in the Republic of Azerbaijan, 15 October 2003. Accessed online 15 May 2016, at <http://www.osce.org/odihr/elections/azerbaijan/13467?download=true>

<sup>73</sup> Freizer, Sabine, *Idem.*

<sup>74</sup> Furman, Dimitri, ‘Imitation Democracies, The Post-Soviet Penumbra’, *New left review* 32, 2008.

<sup>75</sup> Guliyev, Farid, *op. cit.*, p. 401.

<sup>76</sup> PACE Resolution 1398 ‘Implementation of Resolution 1358, on the functioning of

this harsh criticism, the subsequent actions of the Council ended up legitimising Ilham Aliyev's government at European and international level.

### 1.2.2. *The 2005 Parliamentary Elections: No 'Colours' in Baku*

The 'Colour revolutions' have been defined as a series of peaceful uprisings which took place in several countries of the former Soviet Union after 'fraudulent' elections.<sup>77</sup> Social mobilisation had considerable impact in Georgia (2003), Ukraine (2004), and Kyrgyzstan (2005), influencing the political developments and changing governments in these countries. However, despite the similar social and political contexts and the common Soviet background, the 'Colour revolutions' did not reach Azerbaijan. The November 2005 parliamentary elections, where numerous violations and irregularities were found according to the OSCE's monitoring reports, and the subsequent repression of social mobilisation at a vibrant time in the region, was yet another missed opportunity for the CoE to foster and support the development of an active civil society in the country. Although some mobilisation did occur before and after the November 2005 elections, the protesters did not succeed in fostering political change. Which internal and external factors prevented this from happening? Did electoral monitoring exercise enough pressure? How did the CoE react to the alleged cases of electoral fraud and the subsequent police repression?

In those countries where 'Colour revolutions' took place, alleged electoral fraud was a mobilising tool which unified opposition voices and managed to gather thousands of people in nonviolent protests.<sup>78</sup> According to Dimitri Furman, the social reaction to fraudulent elections in those post-communist countries represented the 'contradiction between the forms and the reality of imitation democracy', as an active civil society demanded true democracy and not only a façade, and wanted the country to be ruled according to the will of its citizens.<sup>79</sup> Therefore, elections, among other social and economic conditions, did help to

democratic institutions in Azerbaijan, 2004.

<sup>77</sup> Gerlach, Julia, 'Colour Revolutions in Eurasia', SpringerBriefs in Political Science, 2014.

<sup>78</sup> Way, Lucan, 'The Real Causes of the Colour Revolutions' p. 56 in *Journal of Democracy*, vol. 19, no. 3, July 2008.

<sup>79</sup> Furman, Dimitri, *Idem*.

bring change to Georgia, Ukraine, and Kyrgyzstan. Due to the pivotal role of alleged electoral fraud fostering social action in these countries, the presence of international observers became crucial. According to Furman, observers can contribute to create momentum for mobilisation and mass protest, as their voices and monitoring assessments might be used by both government and opposition to legitimise their claims and support their arguments. The number of observers monitoring an election can also put considerable pressure on governments, preventing them from carrying out or allowing electoral fraud.<sup>80</sup>

However, despite the developments in other countries of the region, the existence of several socioeconomic conditions for mobilisation, the presence of hundreds of international observers, including those monitoring for the CoE, and the irregularities in the conduct of elections, the 'colourful' wave of change did not reach Azerbaijan. It seems clear that the CoE's monitoring did not exercise enough pressure to help those attempting to mobilise. In the run-up to the November 2005 elections, some factors fostering democratic participation were present in the country, as an unprecedented number of candidates were registered, and several opposition rallies took place on the streets of Baku.<sup>81</sup> These were the first parliamentary elections which took place in the country after accession to the CoE, immediately following the 2003 presidential vote. Three of the most important opposition parties came together in an electoral coalition called 'Azadliq' [Freedom], as according to the experience of opposition parties in other post-Soviet countries where Colour revolutions did succeed, the unification of opposition voices was a significant step for mobilisation.

However, in Georgia and Ukraine, the opposition and its supporters were able to disseminate their messages through the media,<sup>82</sup> and this was not the case in Azerbaijan. Critical voices had very limited visibility due to the allegiance of TV channels, and most of the major newspapers, to the government and its supporters.<sup>83</sup> Azerbaijan's public television, launched in August 2005 to meet one of the country's commitments with

<sup>80</sup> Way, Lucan, *Ibid* 2008.

<sup>81</sup> Freedom House, *Nations in Transit Report on Azerbaijan*, 2006.

<sup>82</sup> European Stability Initiative, 'A Colour Revolution in Baku?', 2005. Accessed online 20 May 2016 at [http://www.esiweb.org/index.php?lang=en&id=321&country\\_ID=2&slide\\_ID=11](http://www.esiweb.org/index.php?lang=en&id=321&country_ID=2&slide_ID=11)

<sup>83</sup> Valiyev, Anar M., 'Parliamentary Elections in Azerbaijan: A Failed Revolution', pp. 17–35 in *Problems of Post-communism*, 53, no. 3, May–June 2006.

the CoE Azerbaijan's public television,<sup>84</sup> did not help to improve the situation, as it was also controlled by the presidential administration.<sup>85</sup> Despite the pressure exercised by the CoE and other international actors, such as the OSCE, to guarantee the freedom of the media, restrictions on the coverage and other methods to prevent mobilisation were used by the authorities, undermining the ability of opposition campaigners to spread their message among the Azerbaijani public.<sup>86</sup>

In the run-up to the elections, the 'revolutionary' occurrences of social mobilisation in the region worried the government in Baku. As a way of preventing mass mobilisation, the authorities used the strict laws on public assemblies to prohibit several rallies in the centre of the capital, and various opposition members were detained while attempting to march on the streets. The PACE monitoring team reacted to these events, acknowledging that they posed significant obstacles for the democratic debate and the conduct of fair and transparent elections. As a response to the Council's subsequent recommendations, the government introduced some changes that had the potential to improve the democratic standards of the elections, such as allowing NGOs to monitor during the election day. However, the proposed changes were never implemented.<sup>87</sup>

More than '1,586 international observers were present during the election'.<sup>88</sup> However, their work and assistance did not prevent the violation of several laws, and numerous interferences in the electoral process took place during the day. According to the OSCE's International Election Observation Mission, 'a wide range of serious violations were observed during the vote count at the polling stations',<sup>89</sup> therefore, the elections did not meet OSCE-CoE standards. In response to the alleged anti-democratic practices, several demonstrations took place in Azerbaijan, organised by the opposition, Azadliq Bloc. The demonstrations managed to gather thousands of people, and they were all wearing orange, as a way of referring to the Orange Revolution

<sup>84</sup> 'To turn the national television channel into a public channel managed by an independent administrative board', PACE Opinion 222, 2000, paragraph IV f.

<sup>85</sup> Freedom House, *Idem*, p. 10.

<sup>86</sup> Alieva, Leila, 'Azerbaijan's frustrating elections', p. 150 in *Journal of Democracy*, vol. 17, no. 2, April 2006.

<sup>87</sup> Valiyev, Anar M., 'Parliamentary Elections in Azerbaijan: A Failed Revolution', p. 25 in *Problems of Post-communism*, 53, May-June 2006.

<sup>88</sup> Valiyev, Anar, *op. cit.* p. 17.

<sup>89</sup> OSCE/ODIHR, *Report on the Azerbaijani Elections*, p. 2, 2005.

in Georgia. However, police intervention, the fear of violence and repression, and the internal divisions among the opposition Bloc undermined the strength and resilience of the protesters, which ended up dispersing.<sup>90</sup> The momentum was lost.

According to Michael McFaul,<sup>91</sup> an expert on social mobilisation in the post-communist context, essential factors for the success of the Colour revolutions were: ‘an unpopular incumbent, independent media, strong opposition and divisions among the regime’s coercive forces.’ As has been mentioned before, there were no independent media operating in Azerbaijan at that time, and the popularity of President Ilham Aliyev was quite high, as he managed, through diverse methods, to maintain stability within the Government, after the death of his father (the arrest of disloyal ministers seems to be among those methods).<sup>92</sup> Furthermore, opposition forces did not offer a strong and unified alternative to those in power, and this was a crucial factor which undermined the strength of the protests. Together with the weaknesses of the opposition forces, other elements which prevented mobilisation from further developing were, *inter alia*, the use of coercive force by the state apparatus, the governmental control over natural resources (the ‘resource curse’ preventing democratic change), the lack of pressure exercised from outside, and the conflict over Nagorno-Karabakh. These elements will be analysed in the second section of this paper, as they also prevented the Council from being more impactful when monitoring the compliance of the Azerbaijani authorities with the mandate of the organisation.

The role of the CoE could have been crucial at that time if the organisation had given the democratic shortcomings and human rights violations more visibility. Furthermore, several authors claim that another important factor for assessing the strength of leaders in post-communist countries is their level of engagement with the West.<sup>93</sup> Weaker ties to the West might contribute to the autocratic leader holding onto power. However, Lucan Way argues that ‘strong political, and social ties with the US and Western Europe can create important obstacles to

<sup>90</sup> European Stability Initiative, ‘A Colour Revolution in Baku?’, 2005.

<sup>91</sup> McFaul, Michael, ‘Transitions from Post-communism’, *Journal of Democracy*, vol. 16, issue 3, July 2005.

<sup>92</sup> Valiyev, Anar, *op. cit.*, p. 26.

<sup>93</sup> Way, Lucan, *op. cit.*

authoritarian consolidation'.<sup>94</sup> Therefore, the pro-western orientation of an autocratic government might pose an obstacle to its consolidation in power. In this case, a stronger and more visible monitoring by the CoE could have contributed to expanding the colourful wave all the way to Azerbaijan.

### 1.2.3. *The Issue of Political Prisoners*

*'The existence of political prisoners is clearly incompatible with European standards and membership of the Council of Europe. There can be no exceptions to that principle.'*

Pace Resolution 1359, 2004

The situation of political prisoners, those imprisoned for politically motivated reasons in Azerbaijan, has been a major subject of concern for the CoE since the country started the process to join the organisation.<sup>95</sup> The recent developments on this issue, especially the events in January 2013, during the sessions of the Parliamentary Assembly, and the politically motivated arrests which are still taking place,<sup>96</sup> exemplify a clear breach of the obligations which Azerbaijan undertook upon acceding the organisation,<sup>97</sup> and also another missed opportunity for the CoE to protect its partners and other human rights defenders in Azerbaijan. Political prisoners are the most visible image of the limited freedom of expression and the arbitrary use of the Azerbaijani justice system. They also exemplify how detention is used by state authorities as a way of putting pressure on those expressing dissenting opinions.<sup>98</sup>

During the first years that followed accession in 2001, solving the problem of political prisoners became one of the priorities for the Council, and several rapporteurs and experts were committed to this endeavour. PACE published diverse resolutions and recommendations

<sup>94</sup> *Idem.*

<sup>95</sup> Akhundova, Gulnara, 'Opinion No. 222, Implementation of Azerbaijan's commitments to the Council of Europe in the field of fundamental freedoms', p. 7 in Institute for Reporters Freedom and Safety 2014.

<sup>96</sup> In October 2015 the CoE stopped participating in the joint human rights working group with the government of Azerbaijan and several human rights defenders, due to the fact that 'an increasing number of human rights defenders have been imprisoned recently'.

<sup>97</sup> PACE Opinion No.222, point 14.4, 2000.

<sup>98</sup> Akhundova, Gulnara, *op. cit.*, p. 21.

on this matter, and the response of the government to this pressure came mainly through presidential pardons, which granted liberty to hundreds of alleged political prisoners.<sup>99</sup> Presidential pardons are a constant practice in President Aliyev's administration and another example of the arbitrary nature of the Azerbaijani justice system. In order to respond to international pressure on the issue of political prisoners, the president may decide to grant pardon to some individuals, and this is used as an impactful tool to improve the country's image and its human rights record. However, these arbitrary measures have not changed the government's policies towards critical opposition voices, which keep being repressed. Several charges are commonly used to legally justify politically motivated detentions, including hooliganism, drugs or weapons possession, supporting terrorism, and tax evasion.<sup>100</sup> Despite the significant achievements which took place throughout the first years after accession, in 2005 PACE decided to follow the opinion of the Azerbaijani delegation and for the first time chose not to appoint a rapporteur to monitor the issue of political prisoners. However, according to several reports,<sup>101</sup> there were around 50 political prisoners in the country at that time, and the situation quickly deteriorated in the following years, as the pressure on the government diminished substantially. Since 2005, Azerbaijani officials have systematically refused to publicly address the topic in the debates and discussions within the framework of the CoE, and have condemned any critical reports and recommendations issued by PACE on this issue. The Azerbaijani delegation to the CoE believes that the debate on political prisoners will never bring 'cooperation but only confrontation',<sup>102</sup> and therefore rejects any sort of action of the Council on this matter.

It is important to look at this issue in a holistic manner, as it is a direct consequence of the legal, social, and political context of the country, an environment which enables the practice of politically motivated detentions. These conditions included, among others, limited media freedom, the criminal defamation provisions, limitations on the work

<sup>99</sup> Knaus, Gerald, 'Europe and Azerbaijan: The End of Shame', p. 13 in *Journal of Democracy*, vol. 26, issue 3, July 2015.

<sup>100</sup> Akhundova, Gulnara, *op. cit.*

<sup>101</sup> Freedom House, *Nations in Transit Report on Azerbaijan*, p. 16, 2006.

<sup>102</sup> Akhundova, Gulnara, *op. cit.*, p. 32.

of NGOs, and the lack of independence of the judiciary, were already addressed in PACE's Opinion No. 222, just before accession, but they remain unresolved, posing significant threats to the protection of human rights and the development of a democratic system. One example of the most pressing limitations to freedom of expression is the criminalisation of 'defamatory and offensive views posted on the Internet', a clear attempt to limit internet freedom. Other examples are the legal amendments passed in 2009 and 2011, which make it very difficult for foreign NGOs to register to operate in the country and to obtain international funds. These regulations contribute to creating a climate of social apathy, where critical voices and independent organisations are unable to flourish. According to several Freedom House 'Nation in Transit' reports, the country's record on freedom of expression remains very poor and has been deteriorating dramatically every year since 2001.

In 2009, a referendum took place in Azerbaijan, and it approved several amendments to the country's Constitution, including the abolishment of presidential term limits that, therefore, allowed President Aliyev to be re-elected into office. This Constitutional amendment was passed despite the acute criticism of the Venice Commission, which stated that the reform contradicted European practice and was an obstacle for the existence of democratic checks and balances,<sup>103</sup> reinforcing the almost absolute power of the president. That same year, the critical situation of political prisoners in the country became more visible, when Novruzali Mammadov, a journalist and human rights defender, died in detention. According to several sources, his death was the consequence of both inadequate medical assistance and the conditions of his imprisonment, as he was forced to spend most of his time in solitary confinement.<sup>104</sup> As a response to these claims, and to other well-known cases, following the request of several Azerbaijani NGOs, PACE appointed Christoph Strässer, a German Social Democrat member of the Assembly, as rapporteur on political prisoners. He was the first rapporteur on this matter since 2005; he was given the mandate to monitor the situation, visit the country and present reports and recommendations, with the

<sup>103</sup> Akhundova, Gulnara, *op. cit.*, p. 72, 2014.

<sup>104</sup> The Observatory for the Protection of Human Right Defenders. Accessed online 2 June 2016 at <http://www.omct.org/human-rights-defenders/urgent-interventions/azerbaijan/2011/10/d21439/>

aim to put pressure on the government to make progress and fulfil its obligations. The Azerbaijani delegation was very critical of his appointment, and argued that the Council lacked an agreed-upon definition of ‘political prisoners’, and therefore, Strässer’s work was ‘meaningless’.<sup>105</sup> They also claimed that the rapporteur was influenced by ‘enemies of the country’ and that he was clearly attempting to ‘segregate Azerbaijan’.<sup>106</sup> A few months later, when Strässer was trying to visit the country, he was denied a visa by the Azerbaijani authorities. This tense situation illustrated how the government was attempting to obstruct the monitoring work of the organisation it belonged to. However, the most surprising development took place during a session of the PACE, where several parliamentarians strongly supported the Azerbaijani delegation, criticising Strässer’s work and claiming that he had no authority ‘to assess violations of fundamental rights and freedoms’.<sup>107</sup> The following section of this paper will address several economic, diplomatic, and geopolitical factors that might explain why Azerbaijan has enjoyed such widespread support in the PACE.

In January 2013, during one of the most heavily attended debates in the history of the Parliamentary Assembly,<sup>108</sup> Christoph Strässer presented the draft resolution, ‘Follow-up to the issue of political prisoners in Azerbaijan’. This was a critical document, a unique opportunity for the CoE to send a clear message regarding the politically motivated detentions in Azerbaijan, making these violations of human rights visible. However, in what was yet another missed opportunity for the CoE to uphold its values, with 79 votes for and 125 votes against, the resolution was voted down. During the debate, those parliamentarians strongly supporting the position of the Azerbaijani delegation used arguments such as the ‘threats of Islamic extremism in the country’, ‘the complexities of Azerbaijani geostrategic location’, ‘the impartiality of the report’, and the double standards, in order to justify their criticism towards Strässer’s work. All Russian, Turkish, and Spanish parliamentarians voted to support the Azerbaijani

<sup>105</sup> Knaus, Gerald, *op. cit.*

<sup>106</sup> RFERL, ‘Azerbaijan won’t give a VISA to PACE Rapporteur’, June 9, 2016. Accessed on 9 June 2016 at [http://www.rferl.org/content/azerbaijan\\_will\\_not\\_give\\_visa\\_to\\_pace\\_rapporteur/24300593.html](http://www.rferl.org/content/azerbaijan_will_not_give_visa_to_pace_rapporteur/24300593.html)

<sup>107</sup> European Stability Initiative, ‘Azerbaijan Debacle: The PACE debate on 23 January 2013’, p. 4, February 2013

<sup>108</sup> *Idem.*

delegation and heavily criticised the report. Immediately following the session, which was a turning point in the history of the CoE-Azerbaijani relations, Strässer expressed his deep concerns regarding the ability of the Council to effectively uphold human rights in the country and stepped down as rapporteur.<sup>109</sup> Since then, there has been no rapporteur on the issue political prisoners, and the debate on the topic remains one of the most controversial issues for the work of the organisation in Azerbaijan.

Some months after the resolution was rejected by PACE, several partners of the CoE were arrested in Baku. The case of Ilgar Mammadov, Director of the CoE Schools of Political Studies, was one of them. He was arrested in February 2013, just a few weeks after the PACE session, on charges of inciting mass violence, and sentenced to seven years in prison. He remains in detention today despite the ruling of the ECtHR which concluded that his detention was politically motivated, ‘to silence or punish the applicant’ and contravened the ECHR.<sup>110</sup> His case exemplifies the problem of implementation of ECtHR judgments, also when dealing with political prisoners. The Azerbaijani authorities have refused on several occasions to implement the authoritative judgments of the Court and to modify their decisions in accordance with the rulings coming from Strasbourg.<sup>111</sup> Due to the absence of a separation of powers in Azerbaijan, which results in the influence of the government in legislative and judicial powers, implementation of the Court’s decisions remains very problematic, and the requests of the CM demanding Mammadov’s release have been ignored by the government of Azerbaijan. In the last chapter of this paper, the mechanism granted by Article 52 of the ECHR, which was invoked by Secretary General Jagland in 2015, will be analysed as a window of opportunity for the release of Mammadov and other detainees.

In 2014, when President Aliyev was questioned about the existence of political prisoners in Azerbaijan he said, ‘after broad discussions in the Council of Europe, the resolution launched by some members of the Assembly regarding the issue of political prisoners in Azerbaijan failed.

<sup>109</sup> Knaus, Gerald, *op. cit.*, p. 13.

<sup>110</sup> *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, ECtHR, 22 May 2014, at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144124>

<sup>111</sup> Amnesty International, ‘Guilty of Defending Rights. Azerbaijan’s Human Rights Defenders and Activists Behind Bars’, Amnesty International Publications, 2015.

One of the most important institutions of Europe has therefore confirmed that there are no political prisoners in Azerbaijan'.<sup>112</sup> President Aliyev's words highlighted that the strategy of his government had succeeded: to obtain international legitimacy through the membership and support of the CoE.

#### 1.2.4. *The Azerbaijani Chairmanship of the Committee of Ministers (CM)*

*'Over the next six months, my country will render its strong support and invest its efforts around three key pillars of the Council of Europe - human rights, rule of law and democracy.'*

Azerbaijan's Foreign Minister Elmar Mammadyarov, Strasbourg, 2014.

*'Azerbaijan will go down in history as the country that carried out an unprecedented crackdown on human rights defenders during its chairmanship.'*

Nils Muižnieks, CoE Commissioner for Human Rights, Strasbourg, 2014.

Azerbaijan took over the six-month rotating Chairmanship of the CM in May 2014. The CM is the statutory decision-making body of the organisation, where all member states are represented by their Ministers of Foreign Affairs. According to the Statute of the CoE, 'the Committee shall consider any action required to further the objectives and mandate of the Council of Europe, including the conclusion of conventions or agreements'. The responsibility of chairing this body is expected to have a positive impact on member states, as it is an opportunity to advance the country's commitment to the values of the organisation. The rotating Chairmanship also gives the CoE a valuable chance to influence the development of democracy, human rights, and the rule of law in each of the member states, and therefore, the year 2014 was perceived as a window of opportunity for the Council to influence the Azerbaijani authorities more effectively. At the handover ceremony of the Chairmanship, the country's representative presents the priorities for the period, and six months later, the outgoing Chair summarises the activities, events, and reforms carried out in the last months.

When the Azerbaijani authorities took over this position in May

<sup>112</sup> Knaus, Gerald, op. cit.

2014, the country was not respecting its commitment to the values of the CoE, and only a few months before, several restrictions to the laws on NGOs were approved by President Aliyev, despite the negative opinion of the Venice Commission. These legal reforms, together with others adopted later that year, established new obstacles and limitations to the work and sources of funding of civil society organisations, requiring foreign donors to obtain the approval of the Azerbaijani government in order to fund any project in the country.<sup>113</sup> The Venice Commission had already concluded in 2011 that the Azerbaijani legislation on NGOs did not meet CoE's standards and posed significant obstacles to the right to freedom of association, as recognised by the ECHR.<sup>114</sup> However, Aliyev's government decided once again not to follow the Council's recommendations, and a few months before the Chairmanship several criminal cases were launched against various international NGOs that were working to promote democracy in Azerbaijan.<sup>115</sup> Moreover, according to human rights defenders Rasul Jafarov and Leyla Yunus,<sup>116</sup> there were around 80 political prisoners in the country at the beginning of the Chairmanship period, and in March that same year, several opposition leaders, including Ilgar Mammadov, were arbitrarily detained and sentenced under charges of 'disrupting public order'. Just a few days after the handover ceremony in Strasbourg, on May 22, the ECtHR ruled that Ilgar Mammadov's arrest and detention was unjustified. Such a complex context raised relevant questions: Was Azerbaijan ready to take over the highest responsibility in the CoE? Could the Chairmanship be postponed until the country was honouring the commitments it acquired when it joined the organisation? And finally, would the six-month period bring any positive change to the country?

The CoE's Secretary General, Thorbjørn Jagland, attempted to answer these questions through an article published in *The Guardian*

<sup>113</sup> Sports for Rights, 'No Holds Barred, Azerbaijan's human rights crackdown in Aliyev's third term', October 2015, p. 15.

<sup>114</sup> Opinion of the Venice Commission on the compatibility with human rights standards of the legislation on non-governmental organizations of the Republic of Azerbaijan, No. 636/2011, 19 October 2011.

<sup>115</sup> Azerbaijan's Council of Europe Chairmanship: The End of Civil Society, November 2014, p. 13.

<sup>116</sup> Sports for Rights, 'No Holds Barred, Azerbaijan's human rights crackdown in Aliyev's third term', October 2015, p. 15.

in May 2014.<sup>117</sup> He said that the ‘Council was not blind to human rights violations in Azerbaijan’, and that the ‘Chairmanship had the potential to put those violations in the spotlight’. The Secretary General also claimed that cancelling or postponing the Chairmanship was not a possibility because none of the member states, the EU, or any of the bodies within the CoE had ‘publicly questioned Azerbaijan’s chairmanship’. Jagland remained positive about the potential of the organisation to improve the situation in the country during the six-month period. However, an unprecedented crackdown on human rights defenders, as described by the CoE’s Commissioner for Human Rights, Nils Muižnieks, took place in Azerbaijan during that ‘promising period’, which will be remembered for the constant breaches of the country’s obligations before the organisation it was chairing.

In June 2014, President Ilham Aliyev spoke before PACE in Strasbourg, as it is a regular procedure for the head of the member state chairing the CM to address the Assembly. He said that Azerbaijan was undergoing ‘very rapid economic and political transformation’, while ‘all the fundamental freedoms were being protected’ in the country.<sup>118</sup> However, not everyone present in the Assembly that day agreed with him. A group of young people attending the session started to shout: ‘release political prisoners!’, and voices opposing Aliyev’s discourse also came from the parliamentarians.<sup>119</sup> British MP Paul Flynn, addressed President Aliyev claiming that ‘politicians and journalists have been falsely accused and imprisoned in Azerbaijan, and elections have been rigged’. President Aliyev could only react to those claims describing them as pure ‘lies and defamation’.<sup>120</sup>

Only a month later, in July 2014, human rights activist Leyla Yunus was arrested by the Azerbaijani authorities, accused of treason, tax evasion, falsification of documents, and fraud. Leyla Yunus was one of the most prominent partners of the CoE in the country, and her case was yet another example of Commissioner’s Muižnieks words: ‘all Council

<sup>117</sup> Jagland, Thorbjørn, ‘Council of Europe is not blind to Azerbaijan’s rights violations’, *European Voice*, 22 May 2015

<sup>118</sup> Vincent, Rebecca, ‘The Council of Europe and Azerbaijan: A cautionary tale’, p. 42 in Hug, Adam, ‘Institutionally blind? International organizations and human rights abused in the former Soviet Union’, *The Foreign Policy Centre*, 2016.

<sup>119</sup> *Idem.*

<sup>120</sup> *Idem.*

of Europe partners in Azerbaijan languish in jail'.<sup>121</sup> Secretary General Jagland responded to her imprisonment, issuing a statement showing his concern regarding her detention and the opening of a prosecution case against her husband, Arif Yunus, who had also been arrested. Council's action did not bring any positive change, as both Leyla and Arif Yunus remained in detention until late 2015 when they were freed from prison on the grounds of their deteriorating health. However, they were not granted permission by the Azerbaijani authorities to leave the country until April 2016.<sup>122</sup> In June 2016, the ECtHR found that the couple had received inadequate medical care while in detention, which resulted in 'a violation of their rights of individual petition and of the prohibition of inhuman or degrading treatment'. The Court held that 'as a result of inadequate medical treatment, the couple had been exposed to prolonged mental and physical suffering'.<sup>123</sup>

In August 2014, in the midst of the Azerbaijani Chairmanship, another partner organisation of the CoE, acting as a human rights watchdog in the country, was directly targeted by the Azerbaijani authorities: the Institute for Reporters' Freedom and Safety (IRFS) was closed by the police. As a response to these critical developments, Human Rights Commissioner Muižnieks visited the country. There, he openly said that his visit 'was dictated by the arrest and detention over last summer of all the civil society partners of his Office'.<sup>124</sup> His visit evidenced that the Chairmanship period did not improve the human rights situation in Azerbaijan, as it ended with repression and a shrinking space for the development and operation of NGOs,<sup>125</sup> due to the legal restrictions imposed despite Council's recommendations. The most critical development was undoubtedly the targeting of activists and human rights defenders, most of them partners of the Council in the country. The defamation provisions that were used to justify their

<sup>121</sup> commissioner muižnieks' statement, 24 november 24 2014. accessed online 4 june 2016, at <https://humanrightssaz.wordpress.com/2014/11/24/nils-muiznieks-all-of-my-partners-in-azerbaijan-are-in-jail/>

<sup>122</sup> RFERL, Prominent Azerbaijani Human Rights Defenders Allowed To Leave Country, 20 April 2016. Accessed online on 4 June 2016, at <http://www.rferl.org/content/azerbaijan-yunus-couple-leave-country/27683955.html>

<sup>123</sup> Yunusova and Yunusov v. Azerbaijan application no. 59620/14, ECtHR, 2 June 2016.

<sup>124</sup> Commissioner Muižnieks, 'Azerbaijan: stop reprisals against human rights defenders'. Accessed online on 5 June 2016, at <http://www.coe.int/en/web/commissioner/-/azerbaijan-stop-reprisals-against-human-rights-defenders>.

<sup>125</sup> Azerbaijan's Council of Europe Chairmanship: The End of Civil Society', p. 5, November 2014.

imprisonment were supposed to disappear from the country's criminal code after accession to the CoE, however, they continued to be used as a tool to silence critical voices.<sup>126</sup> Immediately after the end of the Chairmanship, another long-standing partner of the organisation, investigative journalist Khadija Ismayilova, was arrested. All these developments which took place during 2014, and the lack of effective action of the CoE when responding to them, deeply damaged the prospects for democratisation in Azerbaijan and the credibility of the organisation as a watchdog of democracy and human rights in Europe.

<sup>126</sup> See Opinion No 222 (2000) and Resolution 1577 (2007) of the Parliamentary Assembly of the Council of Europe.

2.

OBSTACLES FOR EFFECTIVE ACTION  
OF THE COUNCIL OF EUROPE (COE)

After analysing some of the most important developments in the relationship between Azerbaijan and the CoE, this second part will look at the main political and economic factors which have prevented the organisation from having more impact on fostering democratic progress in the country. Several elements which explain the complexities of the political situation in the country, and the limited leverage of the CoE in the South Caucasus, will be addressed throughout this chapter.

The first part of the chapter will review the internal features of the country that have posed obstacles for democratisation, these include the conflict over Nagorno-Karabakh, the availability of oil and gas and the subsequent ‘resource curse’, and the complex geopolitical game taking place in the region.

The second part of the chapter will analyse the internal complexities and weaknesses of the CoE, which have prevented the organisation from being more impactful and effective. Some of these elements are financial constraints, the limited visibility of its actions, and the weaknesses of its monitoring system. The ‘transitional paradigm’ and the overriding focus on elections as a strategy for the promotion of democracy will also be analysed in order to identify how to improve the Council’s impact in the country.

2.1. AZERBAIJAN’S INTERNAL FEATURES

2.1.1. *Democracy Lost in a Geopolitical Game*

Azerbaijan’s geopolitical context and its ‘multi-vectoring and

balanced foreign policy',<sup>127</sup> have important implications for the development of democracy in the country. The complex and strategic location where the Republic lies has not benefited democratic progress, as this geopolitical context has shaped the way the country is perceived by international actors, such as the CoE and its member states. However, internal and regional shifts might change the state of affairs in the near future. Therefore, it can be argued that Azerbaijan's unique location at 'the crossroads between East and West', is a challenge, but also one of the country's biggest assets.<sup>128</sup> Being a door to the Caspian Sea and sharing borders with Russia, Iran, Armenia, Georgia, and Turkey,<sup>129</sup> the country is a major actor in the region and an essential element of the trade and energy routes between East and West. However, the power and divergent interests of its neighbours, the tensions with Armenia, which will be examined in the following section of this chapter, and the Russian influence after decades of Soviet rule, also pose significant threats to Azerbaijan's stability and future, shaping its political developments.

According to Caucasus expert Christine Philippe-Blumauer,<sup>130</sup> its geographical position gives Azerbaijan 'a comparative advantage' when it comes to the way it is perceived by other international actors, and this benefits the country in negotiations over democracy and human rights issues with Europe and the US. The regional complexities are framed as threats to the country's independence, and are constantly used by the Azerbaijani authorities to justify the use of repressive measures internally. Furthermore, it seems that, as a strategic element in the geopolitical game, Azerbaijan is able to 'set the rules' in relation to other players, and this severely undermines the democracy promotion efforts of western actors such as the CoE. This becomes evident at a time of tense relations between Russia and the EU, as Azerbaijan benefits from being a solid partner for Europe's energy security, and it is determined to become a 'hub for energy transit from Central Asia to Europe', by-passing Russia.<sup>131</sup> The availability of oil and gas in Azerbaijan has

<sup>127</sup> Chatham House Roundtable Summary: The Geopolitics of Azerbaijan, Elkhan Nuriyev, Centre for Strategic Studies under the President of Azerbaijan, London, 28 April 2010.

<sup>128</sup> Makili-Aliyev, Kamal, 'Azerbaijan's Foreign Policy: Between East and West', IAI Working Papers, vol.13, no. 05, January 2013.

<sup>129</sup> The Azerbaijani enclave of Nakhichevan shares borders with Turkey in the northwest.

<sup>130</sup> Philippe-Blumauer, Christine, 'Azerbaijan: Where Geopolitics Perpetually Trumps Democratization', Foreign Policy Research Institute, June 2015.

<sup>131</sup> *Idem*.

resulted in significant economic benefits, which will also be analysed in this chapter, as the revenues from the energy market have contributed to consolidate both Heydar Aliyev and Ilham Aliyev in power.

Relations with Iran, Azerbaijan's southern neighbour, have not always been easy, as Tehran has traditionally feared that Baku's co-operation with the US and Israel would result in 'Western strategic presence in the South Caucasus and the Caspian Sea'.<sup>132</sup> During the first years following independence, under Elchebey's Popular Front government, relations were increasingly tense, as 'Iran was opposed to the existence of the Azerbaijani State'.<sup>133</sup> This raised important concerns in Baku, and Iran was therefore perceived as a significant threat to the restoration of Azerbaijan's territorial integrity. Tensions have also been constant in regard to the control over oil fields in the Caspian Sea. However, when Heydar Aliyev came to power, and the country consolidated its independence, relations significantly improved, despite the problematic elements which still exist today. A crucial component of the Azerbaijani-Iranian relations is the presence of around 20 million 'ethnic Azerbaijanis' living in different parts of Iran, mainly concentrated in the north. The Iranian authorities fear the possible mobilisation of this significant minority, as it could be the starting point of a separatist movement which might threaten Iran's territorial integrity, especially with 'a wealthy Azerbaijan acting as a magnet', and attracting many towards its sphere of influence.<sup>134</sup>

On the other hand, Aliyev's government fears the religious influence of Iranian Shia Muslim groups over the Azerbaijani population.<sup>135</sup> Azerbaijan, which established the first democratic republic in the Muslim world, is among the most progressive and secular-minded countries with Muslim-majority populations,<sup>136</sup> and this is an important feature with the potential to have positive implications for the development of democracy today. Despite the country's strong Muslim heritage, Azerbaijani elites have remained strong advocates of a secular and

<sup>132</sup> Nuriyev, Elkhan, 'Azerbaijan: the geopolitical conundrum', *Open Democracy*, 14 June 2012. Accessed online 20 May 2016, at <https://www.opendemocracy.net/od-russia/elkhan-nuriyev/azerbaijan-geopolitical-conundrum>

<sup>133</sup> Cornell, Svante, *op. cit.* p. 307.

<sup>134</sup> *Idem.*

<sup>135</sup> Makili-Aliyev, Kamal, 'Azerbaijan's Foreign Policy: Between East and West', p. 6 in IAI Working Papers, 13-05, January 2013.

<sup>136</sup> Svante, Cornell, *op. cit.*

western-minded political and social model, and therefore, are sceptical about the influence of religious groups in the country, also due to the threats they might pose to the status quo. In the last decades, there has been a revival of religious sentiments in the Azerbaijani Republic, and the authorities are particularly concerned regarding the social and religious influence this might have on the younger population. According to Svante, elements such as the increasing support for the application of Islamic norms might be a reaction to the western influence in the country, which is perceived by some as 'excessive'. It can also be the result of an identity crisis which traces its roots back to decades of Soviet rule, with a 'state imposed atheism'.<sup>137</sup> According to a recent study, around 82 per cent of Azerbaijanis declared that 'religion is important in their lives', and this percentage has been steadily increasing in the last years; the number claiming 'religion not important' is declining substantially.<sup>138</sup>

Religious extremism and radicalisation are perceived by the government as a threatening 'source of agitation', and they have found their way through the Azerbaijani society mainly in the form of Salafi Sunni Islam, not only in Baku but also in the north of the country.<sup>139</sup> According to Sadaddinov, 'those frustrated and losing hope with the lack of enforcement of human rights standards' might also become targets of radicalisation, as the vacuum might be filled by other actors challenging the regime, such as religious extremists.<sup>140</sup> The issue of radicalisation in the country has also been a frequent element used by the Azerbaijani delegation and its supporters during PACE debates. They have used the threat of 'terrorists, extremists, and radical Islamists' to justify certain governmental repressive policies which were not in line with European standards.<sup>141</sup>

Relations with its biggest and most influential neighbour, Russia, have also improved over time, despite the difficulties during the first years of independence and the Azerbaijani opposition to 'any further

<sup>137</sup> Cornell, Svante, *op. cit.*, p. 286.

<sup>138</sup> European Foundation for Democracy, 'Secularism in Azerbaijan and the threat of radicalization in the region', p. 28, June 2015.

<sup>139</sup> Kotecha, Hema, 'Islamic and Ethnic Identities in Azerbaijan: Emerging trends and tensions', p. 14 in OSCE Discussion Paper, July 2006.

<sup>140</sup> Hajimurad Sadaddinov during the meeting: 'Geopolitics and Human Rights in Azerbaijan'. Accessed online 8 June 2016, at <http://carnegieendowment.org/2006/04/27/geopolitics-and-human-rights-in-azerbaijan/9qkv>

<sup>141</sup> European Stability Initiative, 'Azerbaijan Debacle: The PACE debate on 23 January 2013', p. 4, February 2013.

encroachment of Russian influence in the region',<sup>142</sup> As described by Svante, Russian efforts to 'limit the sovereignty of some post-communist countries', especially in the 2000s, also created tensions with Azerbaijan at the time. In the first years after independence, in order to counter-balance Russian ambitions, Azerbaijan chose to strengthen its relations with the EU and the US, increasing their engagement in the region and facilitating their investments, aiming to undermine Russia's ambitions. Nevertheless, the example of how relations with Russia have evolved, 'transforming a possible existential threat, into a sustainable partner', is an example of how Azerbaijan has successfully used its foreign policy in a complex regional context.<sup>143</sup> Today, the country maintains good relations with Russia, although it remains sceptical about joining any project of integration for post-Soviet countries, such as the Eurasian Economic Union. On the other hand, Russia sees Azerbaijan as its main partner in the South Caucasus and has made important economic investments in the country, while developing close co-operation in regional security and military issues.<sup>144</sup> Azerbaijan holds membership in the Commonwealth of Independent States, as do most of the former Soviet republics, but it balances this affiliation with its participation in the Euro-Atlantic organisations, benefiting from both spheres of influence.

Turkey, the first country that recognised the Republic of Azerbaijan as an independent state in 1991, is undoubtedly Azerbaijan's strongest ally in the region, as they share significant ethnic and cultural ties. Turkey is perceived by the Azerbaijani authorities as a crucial partner for security and stability in the South Caucasus. Nevertheless, the relations have changed substantially since the times of the Popular Front government, when the official discourse was that of 'Pan-Turkism' (advocating for the political unification of Turkic ethnic people), moving towards a more balanced foreign policy in order to improve relations with other partners such as Russia.<sup>145</sup> Turkey is also a significant element for

<sup>142</sup> Nuriyev, Elkhan, 'Azerbaijan: the geopolitical conundrum', 14 June 2012, Open Democracy. Accessed online 20 May 2016, at <https://www.opendemocracy.net/od-russia/elkhan-nuriyev/azerbaijan-geopolitical-conundrum>.

<sup>143</sup> Makili-Aliyev, Kamal, 'Azerbaijan's Foreign Policy: Between East and West' p. 5 in IAI Working Papers, 13-05, January 2013.

<sup>144</sup> *Idem*.

<sup>145</sup> Oskanian, Kevork, 'Turkey's global strategy: Turkey and the Caucasus', p. 26 in LSE IDEAS reports, 2011.

the transit of hydrocarbons from the Caspian Sea towards European markets, and therefore a crucial ally for Azerbaijan's economic interests and its relations with the West. The same applies to Georgia, another friendly neighbour, which is crucial for the energy exports to the West, and for the Black-Caspian Sea corridor. As a member of NATO (North Atlantic Treaty Organization),<sup>146</sup> Turkey is also the country's most important ally in the conflict over Nagorno-Karabakh, which will be analysed in this chapter. Turkey's support to the Azerbaijani authorities is also evident at the CoE, where the Turkish delegations always support the Azerbaijanis, especially when it comes to critical PACE resolutions on the state of democracy and human rights in the country.

The geographical proximity of Azerbaijan to countries such as Iraq and Afghanistan, which have been at the top of the agenda for the US, was a significant element of the country's relations with the government in Washington. Azerbaijan has played an important role supporting US efforts in Afghanistan, 'providing troops, overflight rights, and civilian reconstruction'.<sup>147</sup> Regarding Iraq, Azerbaijan was one of the few Muslim-majority countries which sent troops to support the US invasion in 2003.<sup>148</sup> Therefore, it can be argued that the active support of both President Heydar Aliyev and President Ilham Aliyev to US activities on the so-called 'war on terror', made the regime in Baku an important geopolitical ally serving US interests. This had important implications on America's attitude towards the Azerbaijani political elites, which were perceived in a rather friendly manner in Washington.

With regard to the Middle East, Azerbaijan is probably the closest ally of Israel in the Muslim world,<sup>149</sup> and both countries have worked closely on issues such as military co-operation and Israeli economic investments in Azerbaijan.

The geographical complexities briefly described in this chapter serve to illustrate how the geopolitical game that is currently taking place in the South Caucasus, and around the Caspian Sea, has important political

<sup>146</sup> Azerbaijan is not a member of NATO, but the organisation developed an Individual Partnership agreement to work with the country. The agreement includes certain objectives related to institutions and democracy-related reforms.

<sup>147</sup> Philippe-Blumauer, Christine, *op.cit.*

<sup>148</sup> Cornell, Svante, 'The Politicization of Islam in Azerbaijan', p. 33 in Silk Road paper, October 2006.

<sup>149</sup> Makili-Aliyev, Kamal, 'Azerbaijan's Foreign Policy: Between East and West', p. 8 in IAI Working Papers, 13-05, January 2013.

implications shaping the reality of the country and undermining the process of democratisation. Azerbaijan's strategic location, the threat perceptions of the population, the divergent interests of all the actors mentioned above, and the ability of the both Heydar Aliyev and Ilham Aliyev to balance their relations with several geopolitical players, have created substantial obstacles for the progress of democracy. Azerbaijan, on good terms with Washington, Istanbul, Moscow, the Muslim world, and Israel, is a unique actor in a turbulent region. Therefore, it has the potential to play an important role bridging East and West, contributing to strengthening Europe's energy security, consolidating a corridor between Europe and Asia, and acting as a moderate actor within the Muslim world. However, the development of a democratic system and the protection of human rights are crucial elements if Azerbaijan wants to become a strong and reliable partner of both East and West, and a secular and progressive player within the Muslim world. Unfortunately, it seems that the priority of developing a democratic system has been lost somewhere in the middle of the complex geopolitical game that is being played in the region.

### 2.1.2. *The Conflict in Nagorno-Karabakh*

*'The Parliamentary Assembly considers that the accession of both Azerbaijan and Armenia could help to establish the climate of trust needed for a solution to the Nagorno-Karabakh conflict.'*

PACE, Opinion 222, 2000.

The lack of a democratic legacy after Soviet rule has already been analysed in previous sections of this paper but is important to highlight that this legacy not only lacked democratic elements, it also shaped a political context organised around ethnic concerns.<sup>150</sup> This becomes evident when examining the developments of the conflict over the mountainous region of Nagorno-Karabakh, which has shaped Azerbaijan's socio-political life in recent decades and constitutes a significant obstacle to the process of democratisation. Opinion No. 222 of PACE, already acknowledged in the year 2000, the importance

<sup>150</sup> Mkrtchyan, Tigran, 'Democratization and the conflict of Nagorno-Karabakh', p. 4, European Stability Initiative, 2007.

of finding a solution to the conflict in order to advance democracy, peace, and stability in both of the new CoE member states, Armenia, and Azerbaijan. However, 15 years after accession, the Council has not been able to create such a 'climate of trust', and years of talks have failed to obtain a peaceful solution to the conflict. This section will briefly address why the tense situation in Nagorno-Karabakh remains a significant obstacle for the development of democracy and, therefore, for the effective action of actors involved in democracy promotion, such as the CoE.

The unresolved dispute has existed since the beginning of the 20<sup>th</sup> century, but it escalated in the early 1990s until a cease-fire was signed in 1994. In order to understand its roots it is important to look at the events which took place in 1918, when after the demise of the Russian Empire, Azerbaijan declared its independence, starting a period that has been described in this paper as the first democratic experience in the history of the country. At that time, Nagorno-Karabakh was incorporated within the newly-founded Azerbaijan Democratic Republic, despite being populated by an ethnically Armenian majority,<sup>151</sup> and the Azerbaijani sovereignty over the region not being recognised by the League of Nations.<sup>152</sup> This resulted in violent clashes in 1920, a year in which the political context in the region changed dramatically, due to the invasion of the Soviet Red Army.<sup>153</sup> Under Soviet rule, the enclave remained under the control of Azerbaijan as an autonomous region. Therefore, when the country declared its independence in 1991 it claimed sovereignty over Nagorno-Karabakh. At that time the conflict heavily escalated, as the mountainous enclave also declared itself independent, and 'some 30,000 were killed and hundreds of thousands displaced'.<sup>154</sup> In 1993, the UN Security Council adopted resolutions 822, 853, 874, 884, demanding the withdrawal of occupying forces from the territories of Nagorno-Karabakh, as did PACE in 2005.<sup>155</sup> However, none of these resolutions

<sup>151</sup> BBC, 'Nagorno-Karabakh profile', accessed online 6 June 2016, at <http://www.bbc.com/news/world-europe-18270325>

<sup>152</sup> Magnusson, Märta-Lisa, 'Why No Settlement in the Nagorno-Karabakh Conflict? Which are the obstacles to a negotiated solution?', p. 125 in Vamling, K. (ed.), *Language, History and Cultural Identities in the Caucasus*, June, 2010.

<sup>153</sup> Magnusson, Märta-Lisa, *op. Cit.*, p. 115.

<sup>154</sup> *The Economist*, 'The Conflict in Nagorno-Karabakh', 15 April 2016. Accessed online 6 June 2016, at [www.economist.com/blogs/economist-explains/2016/04/economist-explains-9](http://www.economist.com/blogs/economist-explains/2016/04/economist-explains-9)

<sup>155</sup> See Council of Europe Parliamentary Assembly, Resolution 1416 (2005): The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, 25 January

has been implemented, and the territories remain under Armenian control. The peace process and negotiations which are still taking place are led by the OSCE Minsk Group, which is co-chaired since 1997 by Russia, France, and the US.<sup>156</sup>

The conflict has shaped Azerbaijan's political scene since its independence from the Soviet Union, and the military defeats in the enclave ended with Elchibey's Popular Front government, which has been defined in this paper as the country's second democratic experience.<sup>157</sup> Despite the strong nationalistic rhetoric of the Popular Front's government in 1992 and 1993, and their project of creating a democratic state 'which could mobilize the nation to fight against Armenians',<sup>158</sup> the government was perceived as unable to manage the crisis. As has been mentioned in the first chapter, Colonel Surat Huseynov and his men began moving towards Baku, pressuring President Elchibey to leave, handing power over to Heydar Aliyev in 1993.<sup>159</sup> According to Rasim Musabayov, Aliyev's rise to power was achieved through the 'manipulation of popular protests over the way the conflict was managed',<sup>160</sup> and through the use of a discourse framed by the concepts of patriotism, national sovereignty, and territorial integrity, which are still present in the Azerbaijani media today.

Despite the existence of a cease-fire, 'low-scale fighting has continued along the line of contact',<sup>161</sup> and the persistence of this unresolved dispute has severely constrained political competition in Azerbaijan.<sup>162</sup> This was achieved by the elites shifting the attention of the public opinion towards the conflict, and therefore undermining the perceived relevance of other issues on the political agenda. Consequently, bringing political change into a conflict or post-conflict

2005.

<sup>156</sup> Makili-Aliyev, Kamal, 'Azerbaijan's Foreign Policy: Between East and West', p. 7 in IAI Working Papers 1305, January 2013.

<sup>157</sup> Caspersen, Nina, 'Regimes and peace processes: Democratic (non)development in Armenia and Azerbaijan and its impact on the Nagorno-Karabakh conflict', p. 134 in *Communist and Post-Communist Studies* 45, 2012.

<sup>158</sup> Mkrtchyan, Tigran, 'Democratization and the conflict of Nagorno-Karabakh', p. 4, European Stability Initiative, 2007.

<sup>159</sup> Caspersen, Nina, op. Cit., p. 134.

<sup>160</sup> Musabayov, Rasim, 'The Karabakh conflict and democratization in Azerbaijan', p. 63 in 'Conciliation Resources ACCORD', 17, 2005, London.

<sup>161</sup> The Economist, 'The Conflict in Nagorno-Karabakh', 15 April 2016. Accessed online 6 June 2016, at [www.economist.com/blogs/economist-explains/2016/04/economist-explains-9](http://www.economist.com/blogs/economist-explains/2016/04/economist-explains-9)

<sup>162</sup> Caspersen, Nina, op. cit.

society becomes harder, and according to Horowitz,<sup>163</sup> there is a clear power shift in such contexts, where the military and a strong president are empowered. In Azerbaijan, the conflict became a powerful tool for the elites to consolidate their authority, and it is clear that both President Heydar Aliyev and President Ilham Aliyev benefited from a personalistic, patriarchal, and clan-based form of leadership, which was further reinforced by the tensions in Nagorno-Karabakh. After signing the cease-fire agreement, President Heydar Aliyev portrayed himself as a symbol of security and stability<sup>164</sup> and used the unresolved conflict to ‘justify repressive measures’, and to discredit the opposition, blaming them for the defeats on the battlefield during the years which followed independence.<sup>165</sup> He also used ‘normative incentives’ such as calls to Azerbaijani patriotism, to demobilise the already weak critical voices.<sup>166</sup> The same strategies are still used today by his son, President Ilham Aliyev, which according to several authors, has managed to improve his image and increase his legitimacy through his ‘hard-line position’ on this issue’.<sup>167</sup>

Another consequence of the experience of war and conflict, was the ‘radicalisation of popular attitudes’,<sup>168</sup> limiting the space and opportunities for ‘moderate voices’ and therefore undermining the prospect of having a diverse and inclusive democratic debate. The Azerbaijani military actions have also resulted in a significant increase in military expenditure, diverting investments from other important areas such as ‘education, institutional capacity or social services’.<sup>169</sup> Moreover, the tensions over Nagorno-Karabakh have been used by Azerbaijani political elites as an effective tool to reinforce a nationalistic sentiment among the population. A consequence of this is that both sides have been using for decades, an aggressive and confrontational rhetoric, through a discourse of ‘othering’, which makes the space for reconciliation very limited. Such rhetoric severely undermines the

<sup>163</sup> Horowitz, Shale, ‘Explaining Post-Soviet Ethnic Conflicts: Using Regime Type to Discern the Impact and Relative Importance of Objective Antecedents’, pp. 634–660 in *Nationalities Paper* 29, no. 4, 2001.

<sup>164</sup> Cornell, Svante, *op. cit.*, 2015.

<sup>165</sup> Mkrtchyan, Tigran, *op. cit.*

<sup>166</sup> Bunce, Valerie and Volchik, Sharon, ‘Azerbaijan’s 2005 Parliamentary Elections: A Failed Attempt at Transition’, p. 10 in *CDDRL Working Papers*, Number 89, September 2008.

<sup>167</sup> *Idem.*

<sup>168</sup> Caspersen, Nina, *op. cit.*, p. 132.

<sup>169</sup> Mkrtchyan, Tigran, *op. cit.*, p. 7.

possibilities for both parties to agree on a peaceful settlement of the conflict. Positions remain opposed: while the Azerbaijani side insists on the feasibility and importance of the forceful reintegration of Nagorno-Karabakh for its territorial integrity, Armenians want to guarantee the full independence of the region.<sup>170</sup>

When it comes to the specific work of the CoE, the conflict has also introduced significant obstacles, as it is constantly used as an effective mechanism for the distraction of Azerbaijani public opinion when it comes to addressing human rights violations.<sup>171</sup> Therefore, the use of a conflictual rhetoric in the media and the way the political debate has been manipulated, as has been mentioned above, severely undermines the effectiveness and impact of the Council, as the attention of the public has been successfully shifted away from human rights and democracy issues. This has been achieved by seeking internal stability, security, and territorial integrity using a nationalistic discourse which overshadows the quest for democratisation, and justifies certain repressive actions of the government, in the eyes of the public.<sup>172</sup> Furthermore, despite the fact that the Council identified the objective of promoting dialogue between Armenia and Azerbaijan as a ‘priority’, when both countries joined the organisation in 2001, the CoE has not succeeded in this difficult endeavour. However, there is potential for this to change, and the forum in Strasbourg can be a suitable space for dialogue if the situation improves. The Council should actively support the work of the Minsk Group and serve as a forum for confidence-building between its two member states, at a time when the antagonistic rhetoric keeps undermining the prospects of reconciliation and peaceful co-existence. Undoubtedly, advancing and upholding democracy, human rights, and the rule of law in both Azerbaijan and Armenia would be the most impactful contribution that the Council could make for the resolution of this conflict.

<sup>170</sup> Washington Post, ‘Will there be peace in Nagorno-Karabakh? Two things stand in the way’, 31 May 2016. Accessed online on 6 June 2016, at <https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/31/nagorno-karabakh-frozen-conflict-has-two-big-obstacles-to-a-peaceful-solution/>

<sup>171</sup> Mkrtchyan, Tigran, *op. cit.*, p. 6.

<sup>172</sup> Philippe-Blumauer, Christine, ‘Azerbaijan: Where Geopolitics Perpetually Trumps Democratization’, Foreign Policy Research Institute, 29 June 2015.

### 2.1.3. *Oil and Diplomacy*

*'Oil is a major wealth of Azerbaijan which belongs not only to this generation, but also to future generations'.*

President Heydar Aliyev<sup>173</sup>

Another significant obstacle preventing democratic developments in Azerbaijan has been the way the elites have managed the vast availability of natural resources, mainly oil and gas, and the fact that the economic growth of the country has relied massively on the energy industry. In order to understand the impact of this 'resource wealth', it is important not to forget the role of other elements which have already been addressed, such as the Soviet legacy, the prominence of clans as patronage networks, and the geopolitical elements. It is only by looking at such a complex context that Azerbaijan's 'resource curse' and its 'rentier effects' can be wholly understood and examined in relation to the work of the CoE.

Despite the fact that the 'resource curse' in the Caspian region is not universally accepted among scholars,<sup>174</sup> this theory will be applied here in order to understand how oil- and gas-related rents have affected and undermined the democratisation process in Azerbaijan, and the impact they have had on the work of the CoE. The so-called 'resource curse' applies to countries in which the availability of natural resources have resulted in poor democratic records, corruption, and repression.<sup>175</sup> Following this framework, a 'rentier' state is that which 'receives on a regular basis, substantial amounts of external rent', paid by foreign actors to the country's government in exchange for something.<sup>176</sup> In the case of Azerbaijan, 'resource wealth accounts for a very big portion of the country's GDP', and it is also its most important source of exports.<sup>177</sup>

<sup>173</sup> Website of the State Oil Fund of Azerbaijan. Accessed online 15 June 2016, at <http://www.oilfund.az>

<sup>174</sup> Meissner, Hannes, 'The Resource Curse and Rentier States in the Caspian Region: A Need for Context Analysis', p. 7 in GIGA Working Papers No. 133, May 2010.

<sup>175</sup> Ilhan, Ebru, 'Resource Curse or Resource Blessing: Effective Management of Resource Wealth in Democratising Countries', p. 2 in Turkish Economic and Social Studies Foundation, vol 6, no. 3, 2007.

<sup>176</sup> Mahdavy, 'The Patterns and Problems of Economic. Development in Rentier States: The Case of Iran', p. 428 in Studies in the Economic History of the Middle East, Oxford University Press, 1970.

<sup>177</sup> Shaw, Dayne Lukas, 'Good Governance in the Post-Soviet South: Testing Theories of the Resource Curse in Azerbaijan', p. 529 in Journal of Politics & International Studies, vol.

According to authors such as Michael Ross,<sup>178</sup> such a ‘rentist’ model, has direct consequences on the aspects of democracy, human rights, and good governance in the country, as these revenues can be used by the elites to consolidate the existing power structure, ‘preventing the emergence of social capital’.<sup>179</sup>

The starting point of the ‘resource curse’ in Azerbaijan, was the lack of strong and accountable democratic institutions at the beginning of the extraction process after independence from Soviet rule, when the country signed the so-called ‘contract of the century’, which resulted in the construction of the Baku-Tbilisi-Ceyhan pipeline.<sup>180</sup> This is an important element because state institutions are the ones in charge of managing the wealth obtained through these resources, and if they are democratic, participatory, and consolidated, the resource curse is ‘less likely’ to occur, and therefore, society as a whole could benefit from the ‘rents’ coming into the country.<sup>181</sup> However, according to Hannes Meissner, in the case of Azerbaijan, in the absence of democratic checks and balances,<sup>182</sup> these rents ended up shaping the policies, characteristics, and performance of formal institutions, which were neither strong nor participatory in the 1990s.

Such a ‘rentist’ context has, according to Michael Ross, very specific consequences that undermine the development of a democratic society and shape the way the country is perceived by international actors. He described the first of these consequences as ‘the spending effect’, which can be summarised as the investment of the wealth obtained, through the exploitation of the available resources, in strategies to prevent social mobilisation for political and social change.<sup>183</sup> The expenditure feeds the existing patronage networks, through, for example, employment opportunities in the public sector for those belonging to the powerful clans.<sup>184</sup> Subsidies or welfare measures are also major elements of the

9, Summer 2013.

<sup>178</sup> Ross, Michael Lewin: ‘Does Oil Hinder Democracy?’, pp. 325–361 in: *World Politics*, 53, 3, 2001.

<sup>179</sup> Shaw, Dayne Lukas, op. cit. p. 527.

<sup>180</sup> Meissner, Hannes, op. cit. p. 21.

<sup>181</sup> Franke, A. et al., ‘Kazakhstan and Azerbaijan as Post-Soviet Rentier States: Resource Incomes and Autocracy as a Double ‘Curse’ in Post-Soviet Regimes’, pp. 109–140 in *Europe Asia Studies* 61 (1), 2009.

<sup>182</sup> İlhan, Ebru, op. cit. p. 5.

<sup>183</sup> Ross, Michael Lewin, op. cit. p. 333.

<sup>184</sup> Meissner, Hannes, op. cit. p. 21.

so-called ‘spending effect’, as they play an important role in ‘relieving social pressure’, and avoiding social discontent which could foster the emergence of a critical mass.<sup>185</sup> According to the authors previously quoted, these practices are present in Azerbaijan, and their negative impact on the democratisation process is promoted by the corrupt patronage networks and by the effective control of clans, serving the interests of those in power and dominating the country’s political and social life. Corruption, and such specified practices, are ‘accepted as something normal’ by most of the population.<sup>186</sup> Azerbaijan currently ranks 119 out of 168 countries analysed in Transparency International’s Corruption Perception Index 2015.<sup>187</sup>

According to Michael Ross, another direct consequence of such a ‘rentist’ model is the group formation effect,<sup>188</sup> which consists again of preventing the emergence of forces challenging the status quo.<sup>189</sup> In addition to the practices which have been previously mentioned, the government uses the available wealth to ‘co-opt independent voices’.<sup>190</sup> Farid Guliyev argues that despite the efforts of pro-democracy forces and the work of institutions such as the CoE, ‘petro dollars can convince many to support those in power’, therefore, keeping the society demobilised.<sup>191</sup> The third important element contributing to the consolidation of the dominant power structures in Azerbaijan and other ‘rentist countries’ is that which Ross calls the ‘the repression effect’. This is related to the government’s ‘investment of oil wealth in the security apparatus’.<sup>192</sup> Investing funds for security purposes is, in such cases, related to governmental efforts to repress critical voices, through various forms of harassment. Security forces and the military are also considered crucial in order to protect the extraction of resources, as they might be located in unstable or disputed areas.<sup>193</sup> In the case of

<sup>185</sup> Shaw, Dayne Lukas, op. cit. p. 525.

<sup>186</sup> Franke, A. et al., ‘Kazakhstan and Azerbaijan as Post-Soviet Rentier States: Resource Incomes and Autocracy as a Double ‘Curse’ in Post-Soviet Regimes’, p. 32 in *Europe Asia Studies* 61 (1), 2009.

<sup>187</sup> Azerbaijan Country Profile, Transparency International Corruption Perception Index 2015. Accessed online 12 June 2016, at <https://www.transparency.org/country/#AZE>

<sup>188</sup> Ross, Michael Lewin, op. cit. p. 334.

<sup>189</sup> Shaw, Dayne Lukas, op. cit. p. 525.

<sup>190</sup> Meissner, Hannes, op. cit.

<sup>191</sup> Guliyev, Farid, ‘Oil Wealth, Patrimonialism, and the Failure of Democracy in Azerbaijan’, p. 3 in *Caucasus Analytical Digest*, no. 2, 5 January 2009.

<sup>192</sup> Ross, Michael Lewin, op. cit. p. 335.

<sup>193</sup> Shaw, Dayne Lukas, op. cit. p. 527.

Azerbaijan, more than 4 per cent of its GDP is used to support its military, according to World Bank data.<sup>194</sup> When analysing these data it is also important to take into account the complexities of the Nagorno-Karabakh conflict, together with the turbulent geopolitical context, which have been already addressed in this section.

The last element identified by Ross is the ‘taxation effect’, which is also a direct consequence of how oil revenues are used to significantly reduce the burden of taxation, and therefore, make the population less likely to be represented and to demand accountability from political leaders.<sup>195</sup> The levels and models of taxation can have direct consequences on a population’s political engagement and on the way citizens are perceived by the elites, and vice versa. In order to explain the importance of this effect, several authors addressing this issue have referred to the well-known argument of ‘no representation without taxation’, which in certain societies illustrates how political participation can be closely related to the level of taxation.<sup>196</sup>

Resource wealth does not necessarily have to be a burden for democracy, however, if the state budget is totally dependent on these rents, and the country lacks mechanisms such as independent institutions, a system of ‘check and balances’, and strong watchdog structures, it is unlikely that the population will benefit from the profits of resource exploitation.<sup>197</sup> The best remedy to avoid the consolidation of ‘rentism’ and the effects which have been described above is, according to Ebru Ilhan, the rule of law, accountable democratic institutions, participation, and civic activism, which are essential elements of a sustainable and democratic political and economic system.<sup>198</sup> Transparency in the management of resources is also an important requirement to avoid the ‘rentist’ consequences described by Michael Ross. However, it seems clear that Azerbaijan fits the ‘resource curse’ category, as the oil production is controlled and managed by the regime through the State Oil Fund, and the elites are able to use the rent-related resources to reinforce existing privileges and the power of patronage networks.<sup>199</sup> The effects of such

<sup>194</sup> World Bank Data on Military Expenditure. Accessed online 10 June 2016, at <http://data.worldbank.org/indicator/MS.MIL.XPND.GD.ZS>

<sup>195</sup> Meissner, Hannes, *op. cit.* p. 11

<sup>196</sup> *Idem.*

<sup>197</sup> *Idem.*

<sup>198</sup> Ilhan, Ebru, *op. cit.* p. 8.

<sup>199</sup> Franke, A. et al., *op. cit.*

practices have been especially significant in Azerbaijani political and social life due to its relatively small population of around 9 million people, which makes the 'rentier effects' even more evident.<sup>200</sup>

According to Christopher Walker,<sup>201</sup> when it comes to the promotion of democracy and good governance through the work of international actors, oil and gas rents have severely undermined the incentives for the government to listen and follow external advice. This is evident in the case concerning the CoE, as at a time when the oil-related 'rents' increased, the relations between the Azerbaijani authorities and the organisation deteriorated. When the country entered the 'era of abundance', once the Baku-Tbilisi-Ceyhan pipeline was completed in 2005,<sup>202</sup> the channels for influence and negotiation narrowed dramatically<sup>203</sup> and the leverage of the organisation in the country decreased. Such a context undermines the ability of the CoE to influence pivotal matters such as the issue of political prisoners, or its capacity to push for the conduct of truly democratic elections. As the elites enjoy multiple strategies to consolidate their power internally, and international actors also benefit widely from the resources obtained in the country, the need for support from western institutions in order to obtain legitimacy, diminishes substantially. This became evident during the events which have been described in the previous chapter, which illustrate the decaying influence of the organisation in the last ten years. At times of abundance and economic boom, President Ilham Aliyev has declared that he would be willing to 'withdraw from international rules-based organizations', in order not to follow requirements which go against the 'interests' of his government'.<sup>204</sup>

The Caspian Sea not only provides Azerbaijan with oil, another lucrative product can also be found in its waters: caviar. It is precisely caviar that gives its name to certain practices of Azerbaijani officials abroad: 'Caviar Diplomacy'.<sup>205</sup> According to Gerald Knaus and the European Stability Initiative (ESI), a direct consequence of Azerbaijan's resource-related wealth has been the widespread practice by Azerbaijani

<sup>200</sup> Shaw, Dayne Lukas, op. cit. p. 520.

<sup>201</sup> Walker, Christopher, 'Azerbaijan's Growing Contradictions between Economic and Democratic Development', Delivery Commission on Security and Cooperation in Europe, July 2008.

<sup>202</sup> Guliyev Farid, op. cit.

<sup>203</sup> Franke et al., op. cit. p. 30.

<sup>204</sup> Idem, p. 6.

<sup>205</sup> European Stability Initiative, 'Caviar Diplomacy', 2012.

officials of ‘generous gift giving’, to international officials, with caviar being the most visible element. Such practice, according to Knaus, also reached the corridors of the CoE in Strasbourg and managed to convince many, especially certain parliamentarians of the PACE, that Azerbaijan was better ‘in rather than out’ of the organisation, and that democratic progress was actually taking place in the country. According to the ESI, Caviar Diplomacy is a very important element to understand why the electoral observation conclusions of PACE in the last years have been positive, finding ‘democratic progress in Azerbaijan’. The practice of gift-giving, as analysed by the ESI, would be a direct consequence of Azerbaijan’s oil boom and another example of the ‘the spending effect strategy’, which shows how wealth is used as a tool to silence critical voices and gain support.

Such policies are not only applied at home but also to the country’s international relations, and have shaped the way Azerbaijan is perceived in international forums. When it comes to the CoE, the country’s diplomatic strategies have reached both PACE and the CM as some of the CoE’s member states, which have the power to shape the policies of these bodies, have prioritised the geostrategic and economic relevance of Azerbaijan over the protection of human rights and the progress of democracy. The country’s natural resources and its importance for European energy security have certainly played an important role in shaping how the democratic shortcomings have been addressed in the debates in the CoE. This important challenge not only applies to European democratisation efforts in Azerbaijan, but also to American efforts, as the US has benefited considerably from its economic and strategic interests in the Caucasus.<sup>206</sup>

## 2.2. THE ORGANISATION’S INTERNAL WEAKNESS

### 2.2.1. *The ‘Transition Paradigm’: A Deficient Framework for Council’s Action*

When Samuel Huntington developed the theory of what he called the ‘Third Wave’ of democracy, there was an optimistic feeling about the

<sup>206</sup> Meissner, Hannes, op. cit. p. 21

progress of the democratisation process in several countries in Southern and Eastern Europe.<sup>207</sup> However, a few years later, the complexities of such processes, particularly in the post-Soviet context, have challenged the steadiness of Huntington's Wave. As has been analysed in this paper, the process of post-Soviet transformation, among other geopolitical and economic issues, have posed significant obstacles for democracy in Azerbaijan. According to Michael McFaul,<sup>208</sup> the recent events in several post-Soviet Republics, and the process of de-communisation of their social, political, and economic spheres have developed in a completely different way than that predicted by Huntington. Many 'third-wave' countries have not consolidated democracy and it does not seem that they will be taking that path anytime soon.

Despite these complexities, international actors participating in the democratisation of Azerbaijan seem to have followed the principles of the so-called 'Transition Paradigm.' As a result of the enthusiasm for Huntington's Wave, those working in the development of democracy started to use this analytical framework, and the model was commonly applied when distributing democracy aid in new promising contexts. It became a 'universal paradigm' for understanding the development of democracy,<sup>209</sup> and it was used all around the world, despite the different contexts and complexities in each of the 'third-wave' countries, where democratic progress has later been narrower than expected. As in many other cases, the so-called 'Transition Paradigm', has proven to be distant from the socio-political reality of Azerbaijan, a country which can no longer be labelled as 'transitional', as the process of democratisation became stuck at some point and it now advances towards the consolidation of authoritarianism. Nevertheless, the use of such a 'transitional' analytical framework has been common in the work of the CoE in the country, fostering an approach which prioritises the conduct of elections, despite the constant irregularities, undermining the ability of the organisation to influence the political developments in Azerbaijan.

<sup>207</sup> Huntington, Samuel P., 'The Third Wave: Democratization in the Late Twentieth Century', Norman: University of Oklahoma Press, 1991.

<sup>208</sup> McFaul, Michael, 'The Fourth Wave of Democracy and Dictatorship—Non-cooperative Transitions in the Post-Communist World', pp. 212–254 in *World Politics*, 54(2), 2002.

<sup>209</sup> Carothers, Thomas, 'The End of the Transitional paradigm', *Journal of Democracy*, 13(1), p. 6, 2002.

The ‘Transition Paradigm’, as described by Thomas Carothers,<sup>210</sup> consists of five main assumptions that have been applied to Azerbaijan by international actors such as the CoE. The first point assumes that any country undergoing regime change after a ‘dictatorial rule’, is a country in transition. This has been the attitude of the CoE, which attempted, through the integration of the post-Soviet Republics, to assist them in the process of advancing towards democracy. Despite the organisation’s view of Azerbaijan as a member state steadily moving towards the consolidation of democracy, Transparency International and many other independent actors working in the country argue that this is not the case.<sup>211</sup> Therefore, analysing the political developments in Azerbaijan as if the country were advancing towards democracy is inaccurate and undermines the efforts and impact of the organisation.

Following with the analysis of the ‘Transition Paradigm’, Carothers emphasises the problematic nature of the second assumption, which describes democratisation as a three-step process, consisting of *opening* (a time weaknesses of the regime when opportunities for opposition voices appear), *breakthrough*, (a new government takes office after democratic elections and implements institutional and legal changes), and finally *consolidation* (elections and reforms become regular and normalise, while civil society is empowered).<sup>212</sup> Both Carothers and Guillermo O’Donnell agree in their criticism of this ‘sequence approach’, and claim that democratisation cannot be explained through a ‘linear or rational process’, due to the unexpected influence of social and structural factors.<sup>213</sup> Socio-political developments never took a linear path in Azerbaijan. As has been mentioned before, the Popular Front’s democratic project suffered a breakdown due to the tensions in Nagorno-Karabakh and the subsequent military intervention in 1993, which resulted in an authoritarian regression, and ‘a breakdown of the electoral cycle’.<sup>214</sup> The developments during the governments of both Heydar and Ilham Aliyev have been very different from those described

<sup>210</sup> Idem.

<sup>211</sup> Interview with Rita Patricio, Senior Executive Officer of Amnesty International to the Council of Europe, Strasbourg, 7 April 2016.

<sup>212</sup> Carothers, Thomas, op. cit. p. 7.

<sup>213</sup> Sqapi, Gerti, ‘Transitional Paradigm as an explanation for the Democratization Process’, p. 220 in CBU International Conference on Innovation, Technology Transfer and Education, Prague, February 2014.

<sup>214</sup> Schedler, Andreas, ‘The Logic of Electoral Authoritarianism’ p. 15.

in the second assumption of the ‘Transitional Paradigm’. The hopes for opening and democratic change in the first years were followed by significant human rights crackdowns which have already been analysed in the first section of this paper.

The third ‘Transitional’ assumption is related to the very high expectations of democracy promoters regarding the impact of elections in the process of democratisation. Elections are perceived as ‘generators’ of democratic reforms, in the ‘Transitional Paradigm’ approach.<sup>215</sup> However, despite the positive effect of elections in some of the so-called ‘Third-Wave countries’, the developments in Azerbaijan have advanced in a different direction, and the regime has used elections as a tool to consolidate in power, rather than to promote democracy.<sup>216</sup> The institutionalisation and manipulation of the electoral process, and the legitimisation obtained through the presence and approval of those international actors observing them end up contributing to the consolidation of the authoritarian regime. At the same time, constant breaches of the civil and political rights of its citizens continue taking place.<sup>217</sup> Electoral observation missions of the CoE in the country have traditionally played a more acquiescent role with the Azerbaijani authorities than other international voices. The last example were the November 2015 Parliamentary elections, which the OSCE-ODIHR mission decided not to observe because of the significant governmental obstacles to the organisation’s mandate.<sup>218</sup> However, the CoE decided to remain an observer in the country, and came up with a rather positive statement after the elections, emphasising ‘democratic progress’.<sup>219</sup>

The CoE tends to hold very high expectations of what elections can do for democratisation in the South Caucasus, believing that they can serve to strengthen and consolidate the democratic institutions of the country and that they will broaden political participation and democratic accountability of the state towards its citizens.<sup>220</sup> This

<sup>215</sup> Carothers, Thomas, *op. cit.* p. 8.

<sup>216</sup> Kofi Annan Foundation, ‘Are Elections giving Democracy a Bad Name?’ Accessed online 19 June 2016, at <http://www.kofiannanfoundation.org/articles/4696/>

<sup>217</sup> Sqapi, Gerti, *op. cit.* p. 223

<sup>218</sup> ‘OSCE Parliamentary Assembly will not send observers to Azerbaijan if ODIHR does not, says PA President’, accessed online 20 June 2016, at <http://www.osce.org/pa/184146>

<sup>219</sup> ‘Statement by PACE Election Observation Mission on the parliamentary elections in Azerbaijan on 1 November 2015’, accessed online 19 June 2016, at <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5856&cat=31>

<sup>220</sup> Sqapi, Gerti, *op. cit.* p. 218.

strategy has developed into a form of ‘electoral fundamentalism’, as defined by David Van Reybrouck, which consists of looking at elections, not as a means of engaging in democracy but rather ‘as an end in themselves’.<sup>221</sup> Furthermore, elections in Azerbaijan have clearly failed to foster participation or to bring the government and the country’s elites accountable. During the first years which followed accession to the CoE, following this ‘transitional’ approach, the organisation believed that such elections would eventually become generators of change in Azerbaijan; however, that has not been the case. The combination of the international focus on voting, governmental manipulation and weak monitoring mechanisms, have resulted in what Andreas Schedler described as ‘Electoral Authoritarianism’.<sup>222</sup> The democratic façade is legitimised by international actors such as the CoE, while the elites exercise an authoritarian model of governance. Therefore, voting in such context is no longer an effective instrument for democracy and accountability, but rather a useful tool for the consolidation of authoritarian rulers.<sup>223</sup> The political elites in Azerbaijan have found in elections a very impactful way of weakening and demobilising their opponents, which are always portrayed as marginal groups, and in the last two decades, there has been no real alternation in office, a situation which according to Adam Przeworski, already defines a regime as undemocratic.<sup>224</sup> In order not to legitimise flawed elections, the organisation should improve the objectivity of its monitoring mechanisms,<sup>225</sup> and establish ‘long-term in country’ observation missions, improving the coordination with both the OSCE and the EU. If minimum conditions for real democratic participation are not present, the Council should abstain from observing and legitimising flawed electoral practices.

The fourth assumption of the ‘Transitional Paradigm’ undermines the importance of ‘underlying conditions’ in the democratisation process. Examples of these conditions are the economic development, history,

<sup>221</sup> Van Reybrouck, David, ‘Why elections are bad for democracy’, *The Guardian*, 29 June 2016. Accessed online 30 June 2016 at <http://www.theguardian.com/politics/2016/jun/29/why-elections-are-bad-for-democracy>

<sup>222</sup> Schedler, Andreas, ‘Electoral authoritarianism: the dynamics of unfree competition’, Lynne Rienner Publishers, 2006.

<sup>223</sup> *Idem*.

<sup>224</sup> Przeworski, Adam, ‘Democracy and Economic Development’, p. 18, in *Political Science and the Public Interest*, Columbus: Ohio State University Press, 2000.

<sup>225</sup> Carothers, Thomas, ‘Democracy Aid at 25: Time to Choose’, pp. 59–73 in *Journal of Democracy*, vol. 26, no. 1, January 2015.

institutional models or cultural and ethnic elements. These features are therefore not considered pivotal in the development of the transition process.<sup>226</sup> In the case of Azerbaijan, underestimating the importance of elements such as the level of economic development, the resource wealth, the geopolitical tensions in the region, the Soviet legacy, the influence of religion, or the importance of clans and patronage networks, definitely damages the work, impact and legitimacy of democracy promoters. All those elements, as previously analysed in this paper, shape the social and political life of the country, and are extremely important in order to understand the obstacles to democratic progress.<sup>227</sup> To underestimate their relevance is undoubtedly one of the major failures of the so-called 'Transitional Paradigm', and explains why the theory has proven invalid in the case of Azerbaijan.

The last 'Transitional' assumption, according to Carothers, claims that those 'Third-Wave' transitional countries were not only advancing towards democracy but also building a well-functioning and strong legal system and an institutional network that would allow democracy, human rights and the rule of law to flourish. Such legal and institutional reforms did happen, theoretically, in the case of Azerbaijan, on the run of accession to the CoE, and also during the years that followed, thanks to the assistance of bodies such as the Venice Commission. However, those reforms were only developed theoretically, because in practice, the newly established institutions and legal norms functioned in a way which allowed the elites to exercised effective control over the system. Several examples have been mentioned already, but the tension with the CoE regarding the reform of the Electoral Commission is probably a very descriptive one.<sup>228</sup> The transitional approach takes for granted the development of democratic institutions during the process of democratisation, and this has also been proven wrong in the case of Azerbaijan, where the lack of independent and functioning state structures, and the subsequent corruption, poses significant obstacles for international democracy promotion efforts. Democratic state-building and the establishment of an efficient and accountable state framework

<sup>226</sup> Carothers, Thomas. *op cit.* p. 8, 2002.

<sup>227</sup> Sqapi, Gerti, *op. cit.* p. 225.

<sup>228</sup> 'Joint Final Assessment of the Electoral Code of the Republic of Azerbaijan'. Accessed online 20 June 2016, at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2003\)015-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2003)015-e)

remains an important challenge in the post-Soviet context, where institutions were built, in most cases, from scratch.<sup>229</sup> This issue, despite being on the agenda of the CoE, was not one of the priorities of the democratisation efforts in Azerbaijan, and the long-term consequences of such a strategy have proven to be negative for the democratisation process and the functioning and accountability of the state.

It seems clear that the actions of the CoE actions in the Republic of Azerbaijan have been inspired in different ways by the ‘Transitional Paradigm’, and the same has happened with other democracy promoters working in the country. According to the authors previously quoted here, the theory is no longer effective, especially in the post-communist context and therefore, the CoE should go beyond this paradigm in order to reactivate the process of democratisation in Azerbaijan. Nevertheless, this analysis does not imply that the work of the CoE have had no impact in the country, as important legal and institutional reforms have taken place thanks to the pressure and influence of the organisation. However, most of those reforms have remained mainly formal rather than practical,<sup>230</sup> and their effect has therefore been very limited and clearly insufficient for the progress of democracy. The situation in the country, which exemplifies the complex political and social realities of hybrid regimes consolidating authoritarianism, illustrates the need for new answers and practices, going beyond the ‘Transition Paradigm’ and the mere conduct of elections, which should not be legitimised unless they truly meet the organisation’s standards. Urgent action is needed when dealing with constant fraudulent elections and non-functioning state structures. Fostering the emergence of ‘alternative centres of power’, not only through civil society organisations but also through the development of local governance and strong political party structures should be an overarching priority.<sup>231</sup> This is essential, as the effective control of Aliyev’s YAP party and its supportive clans over the political, economic and social life of the country has proven to be a major obstacle for democracy. Taking a more realistic position towards the state of affairs in Azerbaijan would benefit the Azerbaijani people and the credibility of the Strasbourg-based organisation.

<sup>229</sup> Carothers, Thomas, *op. cit.* p. 16, 2002.

<sup>230</sup> Interview with Delphine Freymann, Secretary of PACE’s monitoring committee working in Azerbaijan, Strasbourg, 12 May 2016.

<sup>231</sup> Carothers, Thomas, *op. cit.* p. 19.

### 2.2.2. *The flaws of CoE's Monitoring Mechanisms*

The different challenges in the relationship between the CoE and Azerbaijan, which illustrate the difficulties for the organisation to foster democratic developments in the country, also exemplify some of the main internal obstacles which the CoE faces today. This section aims to analyse some of those internal weaknesses, in order to understand the lack of enforcement capability and the recurrent attitude of non-compliance among certain member states. The Council is today the most developed system for the protection and promotion of human rights in the European continent.<sup>232</sup> Its main objectives were established in 1949 by the treaty of London, its mandate at the time focused on achieving:

a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage'. This aim shall be reached... 'by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms.'<sup>233</sup>

Theoretically, the CoE gathers European democracies, but in practice, its membership brings together a wide variety of political models ranging from Norway to Azerbaijan, from consolidated democracies to hybrid-regimes or even authoritarian ones. As has been previously mentioned, the decision of the Council to open its doors to a wider membership, especially to the post-Soviet republics, enhanced its political relevance and contributed to differentiate its membership from that of the EU.<sup>234</sup> It also turned the organisation into an influential institutional link with the post-Soviet countries, and a vibrant forum for dialogue. However, the wide variety of political and social realities among its membership has also lowered its standards, undermining its ability to foster democratic reforms and posing serious obstacles for its effectiveness and credibility.<sup>235</sup> The complexities of its relations with

<sup>232</sup> Kicker, Renate, Möstl, Markus and Lantschner, Emma, 'Reforming the Council of Europe's Human Rights Monitoring Mechanisms', *Netherlands Quarterly of Human Rights*, Vol. 29/4, pp. 460–490, 2011.

<sup>233</sup> Statute of the Council of Europe, Treaty of London, May 5, 1945.

<sup>234</sup> Bieri, Matthias, 'The Council of Europe: Time for Reform', *Centre for Security Studies, ETH Zurich, SS Analysis in Security Policy*, No. 133, May 2013.

<sup>235</sup> *Idem*.

Azerbaijan exemplify the opportunities for action and the shortcomings of the Council's work today.

Despite the relevance of its mandate and its extensive membership, the CoE faces important challenges for effectiveness, and many come from inside. After years of rapid development of the European Union, the EU's economic and political relevance has undermined the level of influence and visibility of the CoE. As a response, and since the 1990s, the organisation has focused its work and expertise on the triad of human rights, democracy and the rule of law. The flagship of this strategy is the ECHR, which is undoubtedly one of CoE's major achievements. Thanks to it, and to the rest of its more than 200 Conventions, the organisation can frame itself as the 'watchdog of democracy and human rights' in the European continent. However, several internal weaknesses pose major challenges to this monitoring and protection of rights and freedoms, and even the organisation's most famous instrument, the ECtHR, faces important obstacles due to the large amount of cases it receives and the difficulties in implementing its judgements.

The increasing relevance of the EU, among other political and economic factors, have resulted in a declining engagement of several member states with the Council, as the organisation is not among the priorities of their international agendas.<sup>236</sup> This is having a significant impact, which can be appreciated *inter alia*, in the low-key political representation in the Parliamentary Assembly or the lack of implementation of Council's recommendations. Another crucial consequence of this limited engagement of its member states is financial. The annual budget of the Council is around 440 million euros, and this poses important restrictions to the work of the organisation, as dealing with the monitoring of such a wide and diverse membership, and of its more than 200 Conventions, is a very expensive endeavour. This financial situation has also an impact on human resources, sometimes insufficient, and on the 'field-presence' of the organisation, which remains very small.<sup>237</sup> The fact that the Council is a Strasbourg-based organisation, with very limited human resources present in member states like Azerbaijan, undermines the impact of its projects. The organisation could benefit from a stronger presence, as its monitoring

<sup>236</sup> Task Force Think Tank, 'Smart Power: Ways of Enhancing the Council of Europe Impact', p. 3, Strasbourg, January 2014.

<sup>237</sup> Bieri, Matthias, p. 31

systems would work more effectively and its local partners would be more protected in vulnerable contexts. This could improve the implementation of recommendations, and most importantly, would increase the support to civil society actors, very vulnerable in several member states such as Azerbaijan. The response of the organisation to its financial difficulties has been to partner with the European Union, obtaining funds through joint programmes, and this might also have a negative impact on the independence, visibility and autonomy of the Council in the long-term.<sup>238</sup> The EU-CoE relations pose significant challenges to Council's relevance and work due to duplications and the lack of coordination in certain areas, and therefore, both organisations would benefit substantially from more harmonised practices. This section will briefly address some of the main features and weaknesses of each of the most important bodies within the CoE.

#### *Committee of Ministers (CM)*

The CM brings together Foreign Affairs Ministers and Ambassadors of each member state. It is the Council's central decision-making body, in charge of assuring compliance of members with the values of the organisation and with the Conventions they have ratified. Therefore, one of the most important tasks of the CM is to monitor the implementation of the judgements of the ECtHR. This is a problematic task when it comes to Azerbaijan, as the country has refused to implement certain decisions of the ECtHR. The role of the Committee is, therefore, crucial, and its failures to foster members' compliance have direct negative effects on the credibility of the organisation.

Despite its central role, the body has very limited instruments and political leverage to exercise pressure.<sup>239</sup> According to Articles 8 and 9 of the Council's statute, the CM can suspend the membership of a country in case severe violations of human rights take place. It can also suspend the right of the country's representation in the Parliamentary Assembly, as has happened in the cases of Turkey or Russia. This could increase the Committee's impact, and therefore it would be perceived as more influential and able to bring change more effectively.<sup>240</sup> None of these sanctions has ever been applied in Azerbaijan, as many working for the

<sup>238</sup> Task Force, op. cit. p. 27.

<sup>239</sup> *Idem.*

<sup>240</sup> Kicker, op. cit.

Committee argue that the body should foster an environment of ‘peer pressure’ in order to increase compliance of certain member states, rather than focusing on sanctions.<sup>241</sup> There is a ‘culture of consensus’ within the body, which also translates into obstacles for taking ‘crucial decisions’. Consensus between such a wide range of actors, with the existence of strategic alliances between mutually supportive member states, is in some cases not compatible with effectiveness and multilateralism,<sup>242</sup> and this has been evident in the case of Azerbaijan. The same applies to the lack of action of the CM to implement important conclusions and reports of other bodies of the organisation, such as the Parliamentary Assembly, which highlights the need to improve co-operation between the monitoring systems of each body, increasing the engagement of the Committee, which should address the conclusions of all monitoring mechanisms in place. Further engagement of the CM with the activities of other bodies within the organisation could contribute to give all the monitoring systems political and institutional backing.<sup>243</sup>

Having a six-month rotating Chairmanship of the Committee, as a tool to engage members with the daily work of the organisation, was also ineffective when it came to Azerbaijan, as was addressed in the first chapter of this paper. The experience in 2014 exemplified the very limited impact of this rotatory system to improve member’s human rights records and compliance with standards. This case highlighted the pressing need to develop mechanisms in order to prevent non-compliant members from Chairing the Committee, and measures to transform the Chairmanship into a more effective tool to foster member’s engagement.

### *Parliamentary Assembly of the CoE (PACE)*

The Parliamentary Assembly, which gathers parliamentarians from all member states, is in charge of electing the Secretary General of the organisation, and the judges of the ECtHR. It is also responsible for monitoring member state’s compliance with their obligations, and in the case of Azerbaijan, two rapporteurs of the Assembly closely follow the developments in the country and present recommendations accordingly. The Assembly also plays an important role in electoral

<sup>241</sup> Interview with Anne Kayser, Deputy Permanent Representative of Luxembourg to the Council of Europe, Strasbourg, 29 April 2016.

<sup>242</sup> Task Force, op. cit. p. 22.

<sup>243</sup> Idem.

observation and addresses a wide variety of political and social issues when it gathers in plenary in Strasbourg four times a year. Azerbaijan sends six parliamentarians to the Assembly.

The PACE has also suffered in the last few years from the lack of engagement of certain member states, which appoint political figures with a low profile to attend the sessions in Strasbourg. This undoubtedly has a very negative impact on PACE's actions, the visibility of its work, and the credibility of the organisation as a whole. Strengthening the work of the Assembly and further engaging member states with its mandate would substantially benefit the outcome of its monitoring system. The shortcomings have been evident in Azerbaijan when certain PACE rapporteurs have taken a rather positive approach to the 'democratic progress' which was allegedly taking place in the country.<sup>244</sup> This shows the need to bring PACE parliamentarians more accountable through their national parliaments, and this can only be achieved increasing the visibility of their work in the Council. Raising the political profile of the Assembly would probably attract stronger politicians to Strasbourg, and also the attention of the media, which is very much needed. Improving the coordination between different monitoring bodies should be a priority for the CoE, as the proliferation of mechanisms undermines effectiveness and compliance. According to the 2014 Report by the Think-Tank Task Force,<sup>245</sup> the Assembly should be able to have the right to 'hold a vote of no confidence', in cases such as the Azerbaijani Chairmanship, so that non-compliant members are not able to Chair the most influential body of the organisation.

### *Commissioner for Human Rights*

Established in 1999 as an independent non-judicial institution within the organisation, the main objectives of the Commissioner for Human Rights are: assisting member states in the implementation of CoE standards, promoting human rights education, identifying shortcomings, providing information regarding the protection of human rights, and facilitating the work of national human rights institutions.<sup>246</sup> To fulfil this mandate, the Office of the Commissioner conducts 'awareness raising

<sup>244</sup> 'Statement by PACE Election Observation Mission on the parliamentary elections in Azerbaijan on 1 November 2015'. Accessed online 20 June 2016, at <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5856&cat=31>

<sup>245</sup> Task Force, op. cit. p.23

<sup>246</sup> Resolution, 99 (50), Committee of Ministers of the Council of Europe, 7 May 1999.

activities, thematic reporting and country visits’, in order to co-operate with national authorities and civil society actors. Just like PACE rapporteurs, the Commissioner visits Azerbaijan, and any other member state, to ‘raise the standards of human rights protection’.<sup>247</sup> The Commissioner’s office has been one of the most vocal bodies within the Council, criticising certain policies of the government of Azerbaijan.<sup>248</sup> Nevertheless, the fact that the Commissioner conducts observation activities in the country and publishes his own recommendations might again pose severe challenges for a coherent and impactful monitoring of the Organisation, as several mechanisms from the Council are working in the country.

### *Venice Commission*

The European Commission for Democracy through Law, also known as the Venice Commission, is the Council’s advisory body on constitutional matters. Through its expertise, the Commission plays a pivotal role assisting transitional countries to build democratic and accountable institutions and to reform their legislation in compliance with European standards. Its work has been particularly relevant in countries of the former Soviet Union, due to the pressing need to advance in the process of democratic state-building. The Commission is undoubtedly a very active element of the CoE-Azerbaijan relations, as it has contributed substantially to the reform of the country’s legal and institutional systems. However, its recommendations have not always been followed by the authorities, and the CoE has not been able to exercise enough pressure for compliance. Therefore, a more effective system for implementation of the Commission’s recommendations is required, and concrete measures should be taken to ensure implementation. Azerbaijan and the CoE would benefit from following a ‘support and demand approach’, which could provide with tools and capacity-building for democratic governance to the Azerbaijani authorities and civil society actors, tackling corruption and institutional shortcomings.<sup>249</sup>

<sup>247</sup> Commissioner of Human Rights official website. Accessed online 23 June 2016, at <https://www.coe.int/en/web/commissioner/mandate>

<sup>248</sup> Commissioner Muiznieks’ statement on November 2014. Accessed online 23 June 2016, at

<https://humanrightszaz.wordpress.com/2014/11/24/nils-muiznieks-all-of-my-partners-in-azerbaijan-are-in-jail/>

<sup>249</sup> Task Force, op. cit. p. 14.

In addition to the previously mentioned bodies, which have played a very important role in monitoring the developments in Azerbaijan, there are other instruments which have been applied in the country during the last 15 years, *inter alia*, the Committee on the Framework Convention for the Protection of National Minorities, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, the European Committee of Social Rights, and the European Commission against Racism and Intolerance. With all these monitoring systems in place, it seems clear that there is a need for a more holistic approach which brings together all the different recommendations. The variety of systems, with their own opinions and recommendations, poses a challenge to effectiveness and visibility, and undermines long-term impact, resulting in a ‘monitoring fatigue’ which does not benefit either co-operation or implementation.<sup>250</sup>

The coordination and presentation of all these monitoring results in a country-based annual report could be an effective way of communicating and disseminating the findings more effectively, to both the public and the authorities in the country. The current system makes it very difficult to have a clear picture of what is the work of the Council in the country, and which are its most important findings. Furthermore, the ‘monitoring fatigue’ not only applies to the authorities but also to the media and the wider public, which are not able to see the whole picture and to assess the organisation’s impact. The annual report would avoid the existing overlap among certain instruments, and would also make all bodies more accountable, as their results will be compared. If statements of a certain body are divergent from the observations of the rest, this will become evident in the report, helping to highlight and tackle the possible bias in certain mechanisms. The findings of the Commissioner for Human Rights and those from PACE rapporteurs have been substantially different when it comes to Azerbaijan, and this could not be possible if common conclusions had to be agreed and published in an annual report. A more holistic system would also help to spread the Council’s findings ‘among interested stakeholders, helping to raise awareness of the situation in a given country’,<sup>251</sup> putting

<sup>250</sup> Kicker, Renate, Möstl, Markus and Lantschner, Emma, *op. cit.*

<sup>251</sup> Schmitter, Philippe C and Trechsel, Alexander H, ‘Green Paper on The Future of Democracy in Europe for the Council of Europe by a Working Group of High Level Experts’, Draft, 2004.

considerable pressure on non-compliant governments to implement the organisation's recommendations. Some of the previously mentioned internal difficulties explain why the impact of the Council in the Azerbaijan has been limited. It seems clear that some of these obstacles cannot be tackled without the support of CoE's member states, which should increase their engagement with the work of the organisation. In order to achieve this, visibility, credibility and accountability are crucial elements. The most important and effective tool for the CoE to overcome the internal difficulties is its Convention system, which allows the organisation to bring change to many complex contexts in the European Continent.<sup>252</sup> However, the Council's legal influence needs to come with moral and political legitimacy, for that reason, it is important for the organisation to address all these internal challenges. Stronger responses to the breaches of its standards and norms are required; otherwise, legitimacy and influence will be lost forever. Due to the lack of economic leverage, and in order not to exercise sanctions, the most useful tool for the organisation to communicate abuses and promote its values more effectively is efficient communication. In the case of Azerbaijan, when breaches of the organisation's norms take place, the Council's response has neither been firm nor prompt, therefore, it is of utmost importance to communicate human rights violations to the wider public, and this should be done through a more holistic model of monitoring, bringing together the conclusions and recommendations of all existing instruments. 'Naming and shaming' is perceived by some as an obstacle to dialogue and co-operation within the organisation; however, the Council must response firmly to violations and democratic shortcomings, otherwise, the damage to its credibility will become an insurmountable obstacle.

<sup>252</sup> Task Force, *op. cit.* p. 8.

3.

15 YEARS AFTER ACCESSION: WINDOWS OF OPPORTUNITY  
FOR COUNCIL'S ACTION

3.1. ECONOMIC CRISIS: A TIME FOR REFORMS

*'The public, it seems, can forgive an authoritarian government almost anything except a falling standard of living'.*  
Thomas de Waal<sup>253</sup>

The drop in oil prices, which started at the end of 2014, puts an end to a decade of economic boom and authoritarian consolidation.<sup>254</sup> As has been analysed in this paper, 'rentism' defines the direct relation between resource wealth and the consolidation of an authoritarian regime, and explains the political and social developments in Azerbaijan in the last two decades. Therefore, the new economic circumstances pose important questions and open a significant window of opportunity for democracy promotion efforts: will authoritarianism survive in a hostile economic environment? This remains unanswered. However, it seems clear that after almost two years of decaying oil prices, social tensions are shaping Azerbaijan's political context, which seems to be approaching a crisis point.<sup>255</sup>

In a country where around three-quarters of the budget revenues come from oil-related income,<sup>256</sup> the current situation poses major

<sup>253</sup> Waal, Thomas, 'Azerbaijan's Perfect Storm', Carnegie Europe, 19 January 2016. Accessed online 30 June 2016, at <http://carnegieeurope.eu/strategieurope/?fa=62501>

<sup>254</sup> Guliyev, Farid 'Azerbaijan: Low Oil Prices and their Social Impact', p. 16 in 'Low Oil prices: Economic and Social Implications for Azerbaijan', Caucasus Analytical Digest no. 83, April 2016.

<sup>255</sup> European Council on Foreign Relation, 'Azerbaijan: Approaching crisis point', Paper for the Wider Europe Forum, 10 February 2016.

<sup>256</sup> Waal, Thomas, op. cit.

challenges for financial and political stability. The volatile region, with a post-nuclear deal Iran on the south, and Russia going through economic difficulties in the north is also triggering this complex situation. The Azerbaijani economy does not benefit from the improved relations between Iran and the West and from the direct consequence this is having lowering oil prices. Furthermore, the close economic, political and social ties with Russia, make Azerbaijan very vulnerable to the developments of the Russian economy, which is also going through a difficult time.

The current situation has been exacerbated by the devaluation of the Azerbaijani currency, the Manat. This has resulted in inflation and therefore, in a feeling of economic insecurity among the population. The rating agency Fitch foresees an increase in inflation of around 14 per cent by the end of 2016.<sup>257</sup> The impact this has had on wages, and other economic indicators are also posing threats to the stability of the banking system. As was already analysed when examining the country's 'resource curse', due to the pivotal role of energy-related activities, Azerbaijan relies heavily on imports in order to fulfil the demands of its population. Import dependency is almost 100 per cent for some products such as clothes, medicines or cars, according to a recent report by the European Council on Foreign Relations.<sup>258</sup> At a time of currency devaluation, the price of imported goods is rising substantially, and this has a negative impact on the purchasing power of average citizens. The economic difficulties have also caused a reduction of construction projects, resulting in rising unemployment rates. It is estimated that between 150,000 and 200,000 jobs will be lost in the construction industry in 2016, especially in Baku. In order to tackle these problems, the government needs to effectively diversify its economy, after decades of full dependency on the oil market. Reforms are required in order to give the younger population (around 40 per cent of the Azerbaijanis are under 25 years old), new job opportunities outside the energy and construction markets. The public sector is also likely to be reformed in order to optimise resources, and this will also undermine the employment opportunities for younger Azerbaijanis.<sup>259</sup>

<sup>257</sup> Guliyev, Farid, op. cit. p. 17

<sup>258</sup> European Council on Foreign Relation, op. cit.

<sup>259</sup> Guliyev, Farid, op. cit. p 18.

This new situation raises questions regarding the ability of President Aliyev's government to handle the difficulties and tackle the social consequences of this crisis. Certain groups within the population are demanding institutional reforms and economic diversification, and it seems clear that government's expenditure is being scrutinised more closely due to the economic crisis. This citizen's opinion on how the government spends public money is likely to change, and this might affect the way certain expensive events, such as the European Games or the F1 Championship, are perceived by the wider population. These events, among many others, are effective tools for the government to promote the image of the country internationally, a very effective (and expensive) exercise of sports diplomacy. The soft power diplomacy displayed by the government has had a big impact on public expenditure, and this might not be supported by the wider population if their standards of living keep falling. So far, generous gift-giving, among other luxurious forms of informal diplomacy, have been successfully used by the Azerbaijani authorities to improve the country's image in international forums and to frame themselves as modern and western-minded leaders.

It seems, according to previously cited reports by the think-tank European Stability Initiative,<sup>260</sup> that this strategy has been successful when dealing with certain officials of the CoE, but it is unlikely that those kinds of practices will be sustainable in the new economic context. In addition to these diplomatic efforts, another crucial element for the stability of the regime are the patronage networks, organised around supportive clans, and fed by corruption. These networks also seem difficult to sustain without significant amounts of money in circulation. If a thorough and effective reform of the system is conducted, in order to adapt the economy and the budget to the new economic circumstances, it would need to tackle the privileges of the leading Nakhichevan and Yeraz clans, and this is unlikely to happen due to the resistance of the elites in power.<sup>261</sup> It is improbable that the government will put at risk its stability by undermining the privileges of the elites; however, the unprecedented circumstances might push in that direction, and this can have extraordinary consequences, destabilising the regime. The political implications of this new scenario are unclear; still, it is palpable that

<sup>260</sup> European Stability Initiative, 'Caviar Diplomacy', 2012.

<sup>261</sup> European Council on Foreign Relation, *op. cit.*

the lack of a truly democratic debate and the absence of mechanisms to make political leaders accountable is an important challenge to effectively tackle the economic problems.

Successful economic reform can only come with profound democratic transformation. This is where the Council's actions can be crucial. So far, according to Farid Guliyev, the economic problems have not resulted in significant cuts in social expenditure, nevertheless, the budget of Azerbaijani social services remains 'modest', and this has a significant impact on the country's health and education systems, which are 'weak' considering the economic development in the last decade. However, if the economic crisis worsens, cuts in social benefits might occur, hindering social cohesion. Demonstrations against the declining living standards have been going on in certain parts of the country, mainly in the countryside, which is where higher levels of poverty are found. Most of those protests were claiming to be 'apolitical', advocating for social and economic rights rather than civil and political ones. However, most of them were heavily repressed by the authorities,<sup>262</sup> and it is evident that political mobilisation still faces significant challenges, severely undermining its impact.

As Thomas de Waal stated, the point when economic protests become political is blurry. However, it seems clear that the stability and cohesion of the regime will suffer from these difficulties, and that it will need to democratise its institutional structures and diversify its economic model to effectively tackle these economic challenges. The fact that oil wealth might no longer serve as a tool to support certain practices that marginalise opposition voices might also benefit the progress of democracy.<sup>263</sup> It is likely that the country will need to get loans from its Western allies, and this is where the member states of the CoE need to push for democratic reforms in return for economic support. The Council should also offer its expertise for the necessary institutional reforms, following a 'demand and support' scheme, which will enable the organisation to use this opportunity to exercise pressure on the Azerbaijani authorities. It is also important for the Council to coordinate its actions with the EU, which has important economic leverage and can exercise effective pressure through its Eastern Partnership.

<sup>262</sup> Guliyev, Farid, *op. cit.* p. 20.

<sup>263</sup> *Idem.*

3.2. SECRETARY GENERAL'S INQUIRY UNDER ARTICLE 52 OF THE ECHR

*'In these worrying circumstances, and given the lack of positive steps to address the situation, I will send representatives to Azerbaijan to seek explanations from the authorities concerning the country's implementation of the Human Rights Convention.'*

Secretary General Jagland, December 2015.<sup>264</sup>

Article 52 of the ECHR states that, 'on receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.'<sup>265</sup> This provision entitles the Council's Secretary General the right to investigate the performance of member states regarding their obligations under the Convention, specifically concerning the implementation of the rulings of the ECtHR. The scope of the article was defined by CoE's Secretary General in 1964 when it was first invoked. It was then defined as a tool to strengthen the rights protected by the ECHR, through the independent action of the Secretary General. The provision, which has rarely been used, aimed to emphasise the explicit responsibility of member states to provide 'truthful and precise explanations in order to assess how the Convention is being implemented'.<sup>266</sup> In December 2015, Secretary General Jagland invoked this provision for the first time since he came to office, in order to put pressure on the Azerbaijani authorities to implement the Court's rulings regarding the case of Ilgar Mammadov.

Mammadov's case exemplifies the difficult moment of the relations between the Council and the country, and it is also a symbol of the arbitrary use of the justice system to punish critical voices in Azerbaijan. Mammadov is a political activist, leader of The Republican Alternative Movement (REAL), and a renowned academic, which served as director of the CoE School of Political Studies in Baku, and therefore, was a

<sup>264</sup> 'Azerbaijan Human Rights Inquiry'. Accessed online 1 July 2016, at <http://www.coe.int/en/web/portal/-/secretary-general-launches-inquiry-into-respect-for-human-rights-in-azerbaijan>

<sup>265</sup> European Convention On Human Rights, Section III Miscellaneous Provision, Article 52, 1950.

<sup>266</sup> Schabas, William, A., 'The European Convention on Human Rights: A Commentary', p. 899 in Oxford University Press, 2015.

prominent partner of the organisation. The Schools of Political Studies were established with the support of the Council in ‘countries in transition’, to train emerging leaders on issues such as global politics, democratisation or international law. They aimed to create a space for open-minded dialogue, in countries such as Azerbaijan. The fact that the director of such an institution was detained by the authorities illustrates the obstacles faced by the Council to act in the country. Mammadov was arrested in February 2013, and according to the rulings of the ECtHR, he has been arbitrarily detained since then.<sup>267</sup> He was accused by the Azerbaijani authorities of ‘inciting riots’ after he supported some protesters that were marching in the town of Ismaili, and was later sentenced to seven years in prison. Mr Mammadov is an influential figure among the opposition forces, and before his arrest, he was planning to run as a candidate of the REAL opposition movement for the October 2013 presidential elections. The ECtHR has ruled that the criminal proceedings in his case have ‘no legal basis’, and that he is kept in detention as a way to silence him.<sup>268</sup>

Secretary General Jagland invoked Article 52 because ‘judgments from the ECtHR have highlighted an arbitrary application of the law in Azerbaijan, notably in order to silence critical voices and limit freedom of speech.’<sup>269</sup> This mechanism can be an effective way to put pressure on the authorities to implement the rulings of the Court, and also to reform the country’s legislation in order to make it compatible with European standards. Reforming the defamation provisions, which are used to justify the detention of those critical with the government, should also be a priority for the Secretary General and those conducting investigations on the Azerbaijani records on human rights and democracy. The mechanism of Article 52 has the potential to bring member states accountable, and to support the efforts of the CM, which in the case of Mammadov has repeatedly demanded his release ‘without delay’.<sup>270</sup> Member states not respecting the rulings of

<sup>267</sup> European Parliament resolution of 13 June 2013 on Azerbaijan: the case of Ilgar Mammadov (2013/2668(RSP))

<sup>268</sup> Ilgar Mammadov v. Azerbaijan, Application no. 15172/13, ECtHR, 13 October 2014.

<sup>269</sup> ‘Azerbaijan Human Rights Inquiry’. [Accessed online 1 July 2016, at <http://www.coe.int/en/web/portal/-/secretary-general-launches-inquiry-into-respect-for-human-rights-in-azerbaijan>]

<sup>270</sup> Meydan TV, ‘Council of Europe Demands Release of Ilgar Mammadov’, September 2015. Accessed online 3 July 2016, at <https://www.meydan.tv/en/site/news/8227/>

the ECtHR undermine the credibility, reputation, and impact of the organisation as a whole. Using all existing instruments to monitor member state's compliance is, therefore, crucial, and Article 52 opens an interesting window of opportunity for action in Azerbaijan. It is of utmost importance to effectively communicate the findings and actions of the Secretary General's inquiry once the investigation is completed, because otherwise, the impact of this action of the CoE, will be, once again, very limited.

### 3.3. A REVISITED STRATEGY: STEPS FOR IMPACTFUL ACTION

The events described in the previous chapters highlight the need for a revisited strategy of the CoE in Azerbaijan. A new holistic and more accountable approach to monitoring would be the most significant window of opportunity for Council's action, especially considering the new economic context. Rather than focusing on observing elections, legitimising flawed practices, the Council should develop a 'demand and support strategy' in the country, which can effectively respond to the pressing challenges for democracy and freedom in the South Caucasus. It seems clear that the 'transitional approach', focused on electoral observation, have not contributed to the development of democracy. International actors such as the CoE have legitimised, through their constant presence and support of manipulated elections, authoritarian leaders who have breached the values that the organisation stands for. When attempting to foster the democratisation of Azerbaijan, the Council should move towards a more holistic strategy which should prioritise the following elements:

#### *A 'Demand and Support' Strategy for Democratic State-Building*

Due to the under-developed institutional networks of all post-Soviet republics, state-building is, still today, a necessary step in order to advance towards a democratic system. Notwithstanding the important role of the Council shaping the legal and institutional developments in Azerbaijan during the last fifteen years, a lot needs to be done in order to develop a system of checks and balances. Strong and accountable institutions are a necessary step in this direction. The conduct of elections, especially when they are flawed, will not bring democratic progress. Strengthening the institutional network and making the system more democratic and

less corrupt should be a priority. The weaknesses of the country's public institutions will be highlighted at a time of severe economic difficulties, and the Council should take advantage of these circumstances in order to foster substantial reforms. The most effective way of developing those institutional reforms could be through a 'demand and support strategy'. The Council could work on those specific areas where the country might need more help, while the authorities will commit to change certain policies and practices identified as non-democratic. Such strategy, which will provide expert advice through bodies such as the Venice Commission, might have the potential to increase the commitment of the authorities towards the recommendations of the organisation. If Baku asks for the Council's technical and legal assistance to develop certain reforms that will contribute to making its institutional and economic system more effective, the authorities will also have to make compromises. Support will necessarily come with serious democratic commitments, and at a time of economic vulnerability, the country might be willing to engage in such a system.

An example of a body which is vital for the protection of human rights, and the development of a functioning democracy, is the Ombudsman Institution. One of the requirements of the CoE, prior to the accession of Azerbaijan, was the establishment of a National Human Rights body, and the first Ombudsperson was elected by the Milli Majlis in 2002. However, the country needs a truly independent institution, able to stand for the freedoms of Azerbaijani citizens inside the country, as human rights must be guaranteed 'first and foremost' at the national level.<sup>271</sup> Through the work of bodies such as its Venice Commission, the CoE could enable the Ombudsperson to act in a more independent manner, as having a strong watchdog for the protection of the ECHR in the country could bring positive change.

### *Developing Local Democracy*

Establishing democratic and independent local authorities, working closely with the Congress of Local and Regional Authorities of the CoE, was one of the priorities established by PACE's Opinion No. 222 before Azerbaijan's accession, but local democratic governance is still absent in

<sup>271</sup> Schmitter, Philippe C. and Trechsel, Alexander H., 'Green Paper on The Future of Democracy in Europe for the Council of Europe by a Working Group of High Level Experts', Draft, 2004.

Azerbaijan. The Council needs to put pressure on the country to fulfil its commitment, and this is a pressing need, as the Republic is the only member state of the CoE 'without a functioning institution of elected mayors'.<sup>272</sup> Having strong and democratic system of local governance is vital for making state structures less centralised and more accountable to its citizens. This should be a priority for the Council's because local politics have the potential to foster participation and active citizenship. The ultra-centralised system is effectively preventing new vibrant political voices from appearing, and local governance can be a suitable space for the generation of new alternative forms leadership, which might foster the political pluralism that is currently absent in the country.

Another important reason to work on the development of local democratic governance in Azerbaijan is the ability of accountable and well-functioning local institutions to address the rising social tensions, which might increase if the existing economic difficulties worsen in the next few years. Many of the protests which have taken place in the last few months emerged in small towns in the countryside,<sup>273</sup> and this highlights the social disconformity at the local level, which could be addressed more effectively if strong and accountable local institutions were developed. The CoE should be an organisation fostering innovative solutions to the challenges which democracy faces today, therefore, advancing in the field of local democracy through its Congress of Local and Regional Authorities, seems to be a coherent way forward.

### *Creation of Space for Civil Society*

The situation of civil society actors has been deteriorating in Azerbaijan for the last two decades, and the same applies to the level of freedom of the press. This has significant adverse effects on the development of a democratic system, and it is, therefore, an obstacle for Council's positive impact. The best example of how critical the situation is comes from the decision of Secretary General Jagland to withdraw from the Human Rights working group with the Azerbaijani authorities and local non-governmental organisations, at the end of

<sup>272</sup> Jafarli, Natig, 'Azerbaijan: Approaching crisis point', European Council on Foreign Relations, Wider Europe Forum, February 2016.

<sup>273</sup> Shiriyev, Zaur, 'Protests in Azerbaijan: A Political and Economic Watershed', Eurasia Daily Monitor, vol. 13, issue: 21, February 2016.

2015.<sup>274</sup> The objective of the group was to ‘revive the dialogue between the authorities and civil society actors’. However, due to the detention of several human rights defenders, and the fact that several partners of the CoE are currently in jail, the Secretary General considered that the presence of the Council in this working group was meaningless.

The CoE is undoubtedly a suitable moderator of any platform fostering dialogue and bringing together authorities and civil society. Nevertheless, the organisation must always protect and uphold the rights of all actors targeted for their political activities and views. So far, the Council, as already analysed, has not been able to protect its partners from being targeted by the authorities. More visibility is required in order to effectively defend vulnerable civil society actors. Furthermore, a stronger field presence could also help in this endeavour, providing a safe space for dialogue and the exchange of ideas. This would enable the Council to partner locally in a more effective manner, and to directly support the work of civil society organisations through its office in Baku. Now that OSCE’s presence in Azerbaijan has disappeared temporarily due to the tense relations between the government and the organisation, the need for a strong field presence of the Council is even more pressing.<sup>275</sup> Moreover, the financial struggles of civil society organisations will only be tackled effectively through the reform of the legislation that limits its sources of funding, and this should be another priority for action, as a resource-poor civil society faces existential constraints. The impact of local initiatives developed by the Council, such as the Schools for Political Studies, will only be achieved if enough resources are mobilised to protect those working in the country.

### *A Holistic Monitoring System*

The last step of this new approach should be to develop a more holistic and accountable monitoring system. It seems clear that the wide variety of mechanisms in place have resulted in a ‘proliferation fatigue’ which has undermined the effectiveness and credibility of the organisation. The visibility of all those mechanisms is extremely limited, and effective communication should be prioritised. Better coordination

<sup>274</sup> ‘Council of Europe leaves Azerbaijan human rights working group’.

<sup>275</sup> Reuters, ‘OSCE says Azerbaijan has ordered it to close office in Baku’, June 2015. Accessed online 5 July 2016, at <http://www.reuters.com/article/us-azerbaijan-osce-idUSKBN0OP1PU20150609>

among the different bodies and mechanisms, and a compilation of the diverse conclusions on an annual country-based report would benefit the dissemination of the recommendations, and will also harmonise conclusions and proposals. The disparity of voices, ranging from the Commissioner of Human Rights to a less critical PACE, is severely undermining the strength of the Council's work. All mechanisms would be more accountable and transparent if they were better coordinated and presented together. This would also reduce costs and optimise available resources. The CM should also play a more active role in this new form of annual monitoring; the country's non-compliance with the rulings of the ECtHR should be addressed in this report, further engaging the CM in the monitoring process.

The OSCE and the EU could also collaborate with such annual report, as partnering with them would increase the leverage, impact and visibility of the Council. Closer co-operation with the EU when dealing with human rights violations and democratic shortcomings in Azerbaijan should be a priority for the CoE. At a time of economic difficulties in the country, the Council should benefit from the EU's economic leverage, which has the potential to influence the authorities, and work on a CoE-EU co-operation agreement on Azerbaijan. Similar action plans have been signed recently to assist partners in the Western Balkans and Turkey in addressing challenges in the areas of rule of law and human rights. Such agreement would mobilise additional funds to co-operate on issues such as judicial reform, fight against corruption, local democracy or the protection of the rights of LGBTI citizens.<sup>276</sup> All these issues have been addressed by the agreement dealing with Turkey and the Western Balkans and would benefit the impact of the Council in the daily lives of the Azerbaijani citizens.<sup>277</sup>

<sup>276</sup> LGBTI stands for Lesbian, Gay, Bisexual, Transgender and Intersex identities.

<sup>277</sup> 'New Council of Europe/EU cooperation agreement for the Western Balkans and Turkey', April 2016. Accessed online 6 July 2016, at <http://www.coe.int/en/web/podgorica/-/new-council-of-europe-eu-cooperation-agreement-for-the-western-balkans-and-turkey>

4.

CONCLUSION

The political and social developments described in this paper have highlighted the lack of democratic progress and the arbitrary use of the justice system in Azerbaijan. Some pressing factors that have prevented the CoE from being more effective in fostering democratisation in the country are related to Azerbaijan's political and social underlying conditions. The elites of a post-communist and 'rentist' political regime have managed to consolidate their power in a country located at the crossroads of a turbulent region. They have benefited from such a geostrategic location, the 'resource wealth' and from the political consequences of the tensions in the mountainous region of Nagorno-Karabakh, a conflict that has undermined the work and impact of the Council. The CoE should keep working to serve as a forum for confidence-building between its two member states, in order to advance towards a peaceful solution of this conflict. This is a crucial matter, and the Azerbaijani regime has benefited from these tensions, organising politics around ethnicity, fostering a nationalistic sentiment and a feeling of insecurity, which has hindered democratisation. Such a complex context and the absence of space for the generation of new leadership have been examined, as they explain some of the difficulties which the CoE has encountered when attempting to foster democratic progress.

However, in order to understand this lack of progress, the paper has looked beyond the country's political, social and historical features, as several factors which explain the limited impact of the organisation were not found in Baku, but rather along the corridors of Strasbourg. The failures in Azerbaijan illustrate some of the internal weaknesses of the CoE, which are preventing the organisation from promoting and upholding democracy, human rights and the rule of law. Since the country acceded the CoE, the authorities have used the membership to

the organisation to legitimise the regime in Baku and to improve their international profile. Unfortunately, the Council has been unable or unwilling to prevent this from happening, strengthening the democratic façade of the regime and supporting flawed elections. As was mentioned in this paper, according to the OSCE observation missions, every election in the country since 1993 has been manipulated, not meeting European standards. Therefore, the decision of the Council to keep observing and supporting such practices, despite the lack of progress, served to consolidate the elites in power, demobilising opposition voices. Voting has not contributed to the development of a democratic system in Azerbaijan, neither to foster political participation. Consequently, the organisation needs to abstain from supporting such electoral, unless the country makes significant progress toward establishing the conditions for real democratic participation. The CoE's faith in the ballot box has been rather unsatisfactory and has undermined its credibility. The developments in Azerbaijan have challenged the 'transition paradigm', and therefore, the Council should find an alternative framework for action, able to address the complexities of the country's political regime.

This paper has also highlighted how the multiple bodies of the CoE operating in the country need to improve their coordination, harmonising their conclusions and recommendations. The organisation needs to broaden the visibility of its work, bringing together the actions of all its mechanisms in a country-based annual report, which will assess the democratic progress and identify breaches and shortcomings. This holistic report could also serve to improve the accountability, transparency, and visibility of the different monitoring mechanisms, which in the case of Azerbaijan, have reached divergent conclusions on several occasions. The case of PACE, which in the last few years has published rather positive resolutions despite the constant breaches of the country's obligations, exemplifies the need to bring certain mechanism accountable for their actions. Further engagement of member states and national parliaments is needed, and a better coordination and presentation of the different conclusions and recommendations of all CoE bodies would undoubtedly contribute to making the organisation more impactful. It is pressing to avoid the so-called 'monitoring fatigue', which has severely undermined the credibility and leverage of the Council. Increasing its visibility should be a priority for the CoE, which needs to communicate human rights violations and democratic shortcomings more effectively.

This paper has highlighted the need to advance in the process of democratic state-building in Azerbaijan; therefore, the assistance of the CoE is required to address the most pressing institutional weakness. At a time of economic difficulties, the CoE has the potential to play an important role, as successful economic reforms can only come hand in hand with democratic transformation, transparency, and accountability. The Council can be effective supporting such process, providing expert analysis through a 'demand and support' strategy, which will foster democratic state-building. Some of the priorities should be the development of local democracy, the separation of powers and to build a truly independent judicial system. However, the Council needs to ask for something in return if the country wants to benefit from its assistance and expertise. Therefore, support needs to come with the effective communication of human rights abuses and with the government's compromise to tackle democratic shortcomings. 'Naming and shaming' is an effective tool to protect and uphold the rights of many in Azerbaijan, while opening space for civil society action should remain a priority. The CoE should work to foster participation and dialogue whilst protecting the government's critics and human rights defenders from being arbitrarily detained. Therefore, increasing the organisation's field presence might be an effective way for it to act as a more effective watchdog and mediator on the ground, facilitating dialogue between authorities, opposition, civil society, and human rights activists. Regarding the opening of space for critical debate and the generation of new forms of leadership, the organisation should reactivate its Schools of Political Studies initiative, as it can contribute to educating youngsters who are not integrated into the dominant power structures.

This paper has described the relations between Azerbaijan and the CoE as a two-way exercise of diplomacy and influence, where the regime has managed to set the rules of the game, neutralising the democratic efforts of the organisation and using its membership to improve its image and consolidate its power. This has severely undermined the credibility and reputation of the CoE, and the progress of the process of democratisation. A powerful response of the Council is needed in order to fulfil its mandate and reactivate the development of democracy in the country. The organisation has so far failed to uphold democracy and human rights in Azerbaijan. However, this can change if it combines opening space for dialogue, interaction, and mutual evaluation, with

stronger monitoring mechanisms, more visibility of its actions and an innovative analysis of the challenges which democracy faces today. The CoE can champion the promotion of genuine democracy, but it can only do so upholding its values and adapting its methods and policies to the challenges of today's world. The Azerbaijani pro-democracy activists were optimistic about joining the organisation in 2001, the CoE cannot let them down.

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