



REPORT

of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly

This Report may be subject to editorial revision

15 April 2018

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LIST OF ABBREVIATIONS AND ACRONYMS

ALDE	Alliance of Liberals and Democrats for Europe Political Group
CJEU	Court of Justice of the European Union
COE	Council of Europe
COE-CM/Committee of Ministers	Council of Europe, Committee of Ministers
EC	European Conservatives Political Group
ECHR/the Convention	European Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No. 005, as amended by Protocols No. 11 and No. 14, 4 November 1950
ECtHR/the Court	European Court of Human Rights
EP	European Parliament
EPP	European People's Party Political Group
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02
EUR	euro(s)
FDG	Free Democrats Political Group
GRECO	Group of States against Corruption

Investigation Body/the body	Independent investigation body on allegations of corruption within the Parliamentary Assembly
MEP	Member of the European Parliament
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MPs	Member(s) of parliament
NGO(s)	non-governmental organisation(s)
no(s).	number(s)
ODIHR	Organization for Security and Co-operation in Europe – Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Co-operation and Development
OLAF	European Union Anti-Fraud Office
OSCE	Organization for Security and Co-operation in Europe
OSCE-PA	OSCE Parliamentary Assembly
p(p).	page(s)
PACE/Parliamentary Assembly/Assembly	Council of Europe Parliamentary Assembly
para(s).	paragraph(s)
Rec	Recommendation

Res	Resolution
SOC	Socialists, Democrats and Greens Group
UEL	Unified European Left Political Group
UK	United Kingdom
UN	United Nations
US	United States of America
Venice Commission	European Commission for Democracy through Law

EXECUTIVE SUMMARY

The independent external Investigation Body was established by the Bureau of the Assembly as part of a wider approach to dealing with the allegations of corruption and fostering of interests made against some members or former members of PACE. The Investigation Body was required to carry out a detailed independent inquiry into these allegations and to examine the practical functioning of the Assembly in its various activities and its decision-making mechanisms.

The Investigation Body's terms of reference do not identify any particular event, nor do they name any individual, entity or country in respect of which the allegations of corruption and fostering of interests are made. Nevertheless, several NGO reports openly denouncing Azerbaijan's alleged efforts to silence criticism in PACE in exchange for gifts and money, which became known as "caviar diplomacy", have focused the Investigation Body's review on such allegations concerning Azerbaijan.

In the course of the Investigation Body's work, further allegations of suspicious practices and activities within PACE in favour of other countries have been brought to its attention. The Investigation Body examined and pursued these allegations to the extent that they helped elucidate the matters within the current scope of its review. However, due to the organisational, temporal and operational limitations of the Investigation Body's mandate, the Investigation Body was unable to conduct a thorough investigation into all those allegations. It has therefore decided to set them out in the report so that the relevant Council of Europe authorities, including PACE, and, where appropriate, national authorities, may inquire into these allegations as they see fit.

With regard to the general functioning of PACE, the Investigation Body noted that the work and activities of PACE might have wide-ranging effects on various aspects of the social, economic, political and legal functioning of the forty-seven COE member States, and their perception by the international community as a whole. In performing these important functions, PACE was, like any other high-level national or international authority, susceptible to various forms of pressure and improper influence, including corruption.

The key deficiency in the organisation of work and political processes in PACE was found to relate to the manner in which the decisions on appointments to different functions were made. This in particular concerned the lack of transparency and sufficient regulation of the procedures for such appointments, especially the appointments of members of the Monitoring Committee and the Rules Committee, as well as the appointments of rapporteurs in general. An issue of lack of transparency and an absence of safeguards against abuse was also found to arise with regard to the voting processes in the committees, which might affect the voting results and open the door to the possibility of exertion of improper influence, including that of a financial nature.

As to the functioning of PACE in matters concerning Azerbaijan, the Investigation Body established that there was a group of persons working in PACE in favour of Azerbaijan. A certain level of cohesion in their various activities existed, although the Investigation Body found it difficult to establish with a sufficient degree of certainty that they all formed part of a single orchestrated structure. In this context, the Investigation Body found that, in their activities concerning Azerbaijan, several members and former members of PACE had acted contrary to the PACE ethical standards.

On the practical functioning of election observation, the Investigation Body found that the Guidelines on the observation of elections by the Parliamentary Assembly required to be further strengthened and clarified and that PACE should consider including in the ethical framework a specific part dedicated to election observation, in order to ensure that members of PACE

participating in that type of missions complied with those guidelines. As for the specific election observation missions which the Investigation Body examined in detail, apart from its conclusions on the conflict of interest of some members and former members of PACE having participated in those missions, the body was not able to conclude that there had been any improper conduct.

With regard to the exchange of gifts and different forms of benefits, the Investigation Body established that various gifts had been received by the PACE MPs and members of the secretariat engaged in activities relating to Azerbaijan. However, those gifts were in general symbolic and considered to be courtesy gifts which were common in many countries and to which no particular importance was attached. It was also not possible to establish that such gifts were given in exchange for the agreement of a particular MP or secretariat member to act in a particular way. In these circumstances, the Investigation Body did not find that the receipt of these gifts played a prominent role in the PACE activities concerning Azerbaijan. Nevertheless, the Investigation Body stressed the need for transparency in the receipt of gifts or benefits of any nature. The body also found unacceptable suggestions made that PACE MPs would not consider themselves to be bound by the rules on the declaration of gifts in PACE, but only by those rules in their national parliaments. The Investigation Body stressed the need for a diligent observance by MPs of the rules on declarations of gifts and interests as envisaged under the relevant PACE ethical framework.

Furthermore, the Investigation Body established the facts concerning two principal forms of the use of financial means to influence PACE's work concerning Azerbaijan. The first concerned the remunerated lobbying activities performed by a number of former PACE MPs. The second concerned the actual use of money and other corruptive activities as a means of influencing various activities which were directly or indirectly seen as being in favour of Azerbaijan.

With regard to the performance of lobbying activities in PACE, the Investigation Body found that a number of former PACE MPs who had performed such activities had acted contrary to the PACE Code of Conduct. As to the corruptive activities in favour of Azerbaijan, the Investigation Body established that there was a strong suspicion that certain current and former members of PACE had engaged in activity of a corruptive nature.

In view of its findings and conclusions, the Investigation Body made a number of recommendations on the measures to be implemented to rectify the identified shortcomings and fill the gaps found in the Assembly's ethical framework.

INTRODUCTION

A. Independent Investigation Body on the allegations of corruption within PACE

At its meeting on 27 January 2017 the Bureau of the Parliamentary Assembly (“the Bureau”) decided to set up an independent external investigation body to look into allegations of corruption within the Assembly as part of a three-fold approach¹ to dealing with the allegations of corruption and fostering of interests made against some members or former members of PACE.

At its meeting of 24 April 2017 the Bureau adopted the terms of reference of the Investigation Body, as they appear in Appendix I to this report. It also instructed the Secretary General of the Parliamentary Assembly (“SG PACE”) to hold talks and come up with a proposal on the composition of the body, and to take the necessary measures to guarantee the resources required to ensure its proper functioning.

On 28 April 2017 the Assembly ratified the terms of reference of the Investigation Body. On 29 May 2017 the Bureau appointed the three members of the Investigation Body: Sir Nicolas Bratza (United Kingdom), former judge and former President of the European Court of Human Rights; Jean-Louis Bruguière (France), former judge in charge of investigations, in particular into cases related to terrorism and international expert on anti-terrorism issues; and Elisabet Fura (Sweden), former judge at the European Court of Human Rights and former chief parliamentary Ombudsman of Sweden. The composition of the Investigation Body was approved by the Assembly at its plenary session on 26 June 2017.

The terms of reference of the Investigation Body specified that the body should begin its duties with effect from the appointment of its members and that its duties should terminate on submission of its final report, or at the latest on 31 December 2017. However, it was also provided that the Bureau could extend the body’s terms of reference, if need be. On 23 November 2017, at its meeting in Copenhagen, the Bureau decided to extend the terms of reference, instructing the Investigation Body to submit its report by 15 April 2018.

The mandate of the Investigation Body, the full terms of which are set out in Appendix I to the report, provided that it would carry out a detailed independent inquiry into allegations of corruption and fostering of interests made against certain members or former members of the Assembly and that it would examine the practical functioning of the Assembly in its various activities (including but not restricted to part-sessions, committee and sub-committee meetings, rapporteur missions, election observation missions and participation in various events) and its decision-making mechanisms. In the light of these findings, the Investigation Body was required to: (1) verify whether there were any forms of individual conduct by members of the Assembly or former members of the Assembly which had not respected the provisions of the Code of Conduct for members of the Parliamentary Assembly and other relevant codes of conduct; (2) identify any practices contrary to the Assembly’s ethical standards, and determine the extent thereof; (3) establish whether there was sufficient proof to take action against members or former members of the Assembly, pursuant to

¹ The three-fold approach consists of the following: firstly, revision of the Assembly’s code of conduct; secondly, obtaining advice from GRECO; and thirdly, setting up of an independent external investigation to shed light on hidden practices that favour corruption. Further information available at <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6514&lang=2&cat=13> (last accessed on 15 February 2018).

paragraphs 19 and 20 of the Code of Conduct for members of the Parliamentary Assembly; and (4) draw up recommendations on measures to be implemented to rectify the shortcomings and fill the gaps in the Assembly's ethical framework. The mandate also provided that the Investigation Body should produce a report to the Bureau and that its report should be made public, provided that the body itself did not decide that parts of the report should remain confidential.

B. Scope of the Investigation Body's review

The terms of reference establishing the mandate of the Investigation Body do not identify any particular example of alleged corruption, nor do they name any individual, entity or country alleged to have been involved in corruption or fostering of interests. Nevertheless, several NGO reports, the substance of which is set out in detail below,² openly denouncing alleged efforts on the part of Azerbaijan to silence criticism in PACE in exchange for gifts and money, which became known as "caviar diplomacy", have directed the Investigation Body's review to such allegations concerning Azerbaijan.

The first comprehensive report raising these concerns was published in May 2012 by the European Stability Initiative ("ESI"), a Berlin-based think-tank, under the title "Caviar Diplomacy: How Azerbaijan silenced the Council of Europe, Part 1".³ The report traced the history of Azerbaijan in the Council of Europe, claiming that corruption and fostering of interests had played a role in the shaping of PACE policies towards Azerbaijan and in the work of the PACE election monitoring missions in that country.

The ESI published two further reports in February 2013 under the titles "Showdown in Strasbourg. The political prisoner debate in October 2012"⁴ and "Azerbaijan debacle: The PACE debate on 23 January 2013".⁵ These reports concerned the events leading to the rejection of a draft resolution prepared by Mr Christoph Strässer, former member of the German delegation to PACE, on the follow-up to the issue of political prisoners in Azerbaijan and, at the same time, the adoption of a draft resolution prepared by Mr Pedro Agramunt (Spain) and Mr Joseph Debono Grech (Malta) on the honouring of obligations and commitments by Azerbaijan. The ESI reports raised concerns over the animated debate in the Assembly on these two draft resolutions, suggesting that there was a profound division in the Assembly on the subject of political prisoners in Azerbaijan in that one group of members was denouncing serious human rights violations in that country, while another was applauding the progress it had made in recent years. This became known as "the Strässer report" affair.

In November 2013 the ESI published another report entitled "Disgraced. Azerbaijan and the end of election monitoring as we know it",⁶ criticising the work of the PACE election observation mission set up to observe the October 2013 presidential election in Azerbaijan.

The criticism of and accusations against Azerbaijan were given further momentum by the opening of a criminal case in Italy against Mr Luca Volontè, former Italian MP and member of the Italian delegation to PACE. Mr Volontè was suspected of having accepted more than 2 million euros (EUR) from Mr Elkhan Suleymanov and Mr Muslum Mammadov, former members of the Azerbaijani

² See section I of the Facts part of the report.

³ Available at http://www.esiweb.org/pdf/esi_document_id_131.pdf (last accessed on 15 February 2018).

⁴ Available at http://www.esiweb.org/pdf/esi_document_id_135.pdf (last accessed on 15 February 2018).

⁵ Available at http://www.esiweb.org/pdf/esi_document_id_136.pdf (last accessed on 15 February 2018).

⁶ Available at http://www.esiweb.org/pdf/esi_document_id_145.pdf (last accessed on 15 February 2018).

delegation in PACE, as well as other unidentified Azerbaijani political actors, in exchange for support for the interests of the Government of Azerbaijan in the Council of Europe, particularly concerning the Strässer report. The ESI reported on the matter in December 2016 in a publication entitled “The European Swamp (Caviar Diplomacy Part 2) – Prosecutors, corruption and the Council of Europe”,⁷ building on a television report broadcast by the Italian television station RAI 3, on 21 November 2016 under the title “Caviar Democracy”.⁸ The broadcast of the Italian television report and the publication of the ESI reports attracted significant media interest and coverage in which the integrity and credibility of PACE and the whole Council of Europe were questioned.⁹

In parallel to the wide media coverage, pressure started to mount in the Assembly, with several national delegations,¹⁰ political groups,¹¹ speakers of national parliaments,¹² international institutions and officials,¹³ representatives of civil society,¹⁴ NGOs¹⁵ and MPs¹⁶ voicing serious concerns and urging the opening of an effective investigation into those allegations. Some NGOs also suggested expelling the members of the Azerbaijani delegation accused of bribing other members, and suspending the voting rights of the whole Azerbaijani delegation, pending a full investigation. For their part, the members of the Azerbaijani delegation to PACE sent a letter to all PACE members, underlining the need to respect the relevant democratic and judicial processes and expressing scepticism about the allegations made.

In the ensuing period, several further reports defending one or other position concerning the alleged “caviar diplomacy” have been published. In particular, in March and April 2017 the European Strategic Intelligence and Security Centre (“ESISC”), based in Brussels, published two reports in which it claimed that a network of NGOs, related notably to ESI, and its connections within the Council of Europe had led a campaign against Azerbaijan in order to benefit Armenia. In its first report, entitled “The Armenian connection part 1”,¹⁷ ESISC focused on a presumed network of MPs

⁷ Available at http://www.esiweb.org/index.php?lang=en&id=156&document_ID=181 (last accessed on 15 February 2018).

⁸ Available at <http://www.report.rai.it/dl/Report/puntata/ContentItem-3b829e27-145d-4141-b216-1bb41a4cc1bd.html> (last accessed on 15 February 2018).

⁹ See the list of some 180 various international media reports on the issue of “caviar diplomacy”; available at <http://www.esiweb.org/index.php?lang=en&id=540> (last accessed on 15 February 2018).

¹⁰ The national delegations of: Switzerland (17 January 2017); Luxembourg (24 January 2017); Denmark, Estonia, Finland, Latvia, Lithuania, Norway and Sweden (25 January 2017); Belgium (25 January 2017); the Netherlands (25 January 2017); France (26 January 2017); Germany (26 January 2017); Italy (3 February 2017); Austria (20 February 2017).

¹¹ EPP (25 and 30 January 2017); SOC (26 January 2017); EC (20 April 2017).

¹² Denmark, Lithuania, Estonia, Iceland, Latvia, Norway, Sweden (24 April 2017).

¹³ Conference of the INGOs (23 January and 24 April 2017); President of the Congress of Local and Regional Authorities and the President of the European Committee of Regions (3 March 2017); Secretary General of the Council of Europe (24 March 2017);

¹⁴ Letter signed by fifty-eight human rights activists (including Khadija Ismayilova, Intigam Aliyev, Rasul Jafarov, Leyla Yunus) of 16 January 2017; letter signed by ten human rights activists (including Anar Mammadli, Khadija Ismayilova, Intigam Aliyev, Rasul Jafarov) of 25 January 2017.

¹⁵ Transparency International (19 January and 7 February 2017); Amnesty International (20 January 2017); ninety-six different NGOs (Honest World, Disabled Women Society, Free Consumers, Azerbaijani League of Democratic Journalist) (20 January 2017); Human Rights House Foundation (21 April 2017); ESI (27 March, 21 April and 5 June 2017).

¹⁶ Written declaration (No. 624, Doc. 14256 rev) of 5 May 2017 signed by 123 PACE MPs on the initiative of Mr Pieter Omtzigt (the Netherlands).

¹⁷ Available at <http://www.esisc.org/upload/publications/analyses/11791/AC%2002.pdf> (last accessed on 15 February 2018).

defending Armenian positions, while, in the second, entitled “The Armenian connection chapter 2”, criticisms were directed at the then Council of Europe Human Rights Commissioner, Mr Nils Muižnieks.¹⁸

At about the same time, a new report, “European Values Bought and Sold”,¹⁹ was published by the NGO Freedom Files Analytical Centre. It denounced an alleged machine of lobbying and corruption by Azerbaijan in Europe, including PACE.

Furthermore, in September 2017 the Organized Crime and Corruption Reporting Project (OCCRP), in association with Transparency International and several European media outlets,²⁰ published a report alleging the existence of a complex money-laundering scheme involving 2.9 billion US dollars under which members of the Azerbaijani’s ruling elite had used a secret slush fund to pay off European politicians, buy luxury goods, launder money, and otherwise benefit themselves. Allegations were also made that some members and former members of PACE and the European Parliament had been involved in this scheme.²¹

These revelations led to the taking of various measures at the domestic level in respect of those concerned and to the adoption of a resolution by MEPs calling for an investigation into “attempts by Azerbaijan and other autocratic regimes in third countries to influence European decision-makers through illicit means”.²² Moreover, on 28 November 2017 the EP Committee of inquiry set up to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion (“PANA Committee”) held a hearing on the so-called Azerbaijan “Laundromat” revelations.²³

In addition, further investigative journalism in Belgium²⁴ and Germany²⁵ has led to new revelations, which are discussed in more detail below,²⁶ concerning the alleged lobbying practices of

¹⁸ Available at <http://www.esisc.org/upload/publications/analyses/the-armenian-connection-chapter-2--mr-x-nils-muiznieks-council-of-europe-commissioner-for-human-rights/The%20Armenian%20Connection%20Part%202-edt.pdf> (last accessed on 15 February 2018).

¹⁹ Available at http://civicsolidarity.org/sites/default/files/az_lobbying_corruption_report_10_march_2017_public_version_color_1.pdf (last accessed on 15 February 2018).

²⁰ Berlingske (Denmark), The Guardian (UK), Süddeutsche Zeitung (Germany), Le Monde (France), Tages-Anzeiger and Tribune de Genève (Switzerland), De Tijd (Belgium), Novaya Gazeta (Russia), Dossier (Austria), Atlatzso.hu (Hungary), Delo (Slovenia), RISE Project (Romania), Bivol (Bulgaria), Aripaev (Estonia), Czech Center for Investigative Journalism (Czech Republic), and Barron’s (US).

²¹ See further <https://www.occrp.org/en/azerbajjanilaundromat/> (last accessed on 15 February 2018).

²² <http://www.europarl.europa.eu/news/en/press-room/20170911IPR83516/meps-call-for-an-investigation-into-azerbajjani-laundromat> (last accessed on 15 February 2018).

²³ Further information available at <http://www.europarl.europa.eu/committees/en/pana/home.html> (last accessed on 15 February 2018).

²⁴ <https://www.tijd.be/politiek-economie/belgie-algemeen/Belgische-politici-in-opspraak-door-geld-uit-Azerbeidzjan/9931278?ckc=1&ts=1513347805> (last accessed on 15 February 2018).

<http://www.lalibre.be/actu/belgique/asbl-belge-utilisee-pour-legitimer-les-elections-en-azerbaidjan-alain-destexhe-dement-toute-implication-59b76522cd703b65924881f6> (last accessed on 15 February 2018).

<http://www.lesoir.be/113645/article/2017-09-12/une-asbl-fondee-par-alain-destexhe-et-stef-goris-financee-par-lazerbaidjan> (last accessed on 15 February 2018).

<http://www.levif.be/actualite/belgique/alain-destexhe-vraie-fausse-demission/article-normal-721559.html> (last accessed on 15 February 2018).

<http://www.lalibre.be/actu/politique-belge/l-ex-senateur-open-vld-paul-wille-etait-aussi-lobbyiste-pour-l-azerbaidjan-59b9043dcd70fc627d7f4bea> (last accessed on 15 February 2018).

https://www.rtb.be/info/belgique/detail_azerigate-alain-destexhe-convoque-par-le-mr?id=9706713 (last accessed on 15 February 2018).

the Azerbaijani authorities and suspected fostering of interests in PACE in favour of Azerbaijan, particularly in the context of the election observation missions in that country. Those allegations reportedly led to the opening of a criminal investigation in Belgium in respect of Mr Alain Destexhe, former PACE Member from Belgium, and the functioning of an organisation for election observation with which he was associated (European Academy of Election Observation).²⁷

In examining the allegations of corruption and fostering of interests, the Investigation Body focused primarily, although not exclusively, on the issues related to the Strässer report and the PACE election observation activities in respect of Azerbaijan, both of which were cited in the relevant reports as illustrative examples of the illicit practices influencing various activities and the decision-making processes within PACE.

In the course of the Investigation Body's work, further allegations of suspicious practices and activities within PACE were brought to its attention. The Investigation Body examined and pursued these allegations to the extent that they helped elucidate the matters within the current scope of its review. However, due to the limitations on its mandate and operational capacities, the Investigation Body was unable to conduct a thorough investigation into all those allegations. It therefore decided to set them out in its report²⁸ and to leave it to the relevant Council of Europe authorities, including PACE, and, where appropriate, national authorities to inquire into these allegations as they might see fit.

C. The Investigation Body's working methods

Section 9 of its terms of reference provided that the Investigation Body should gather and make use of all relevant information and all documentary, testimonial and material evidence necessary for the fulfilment of its mission. It could, in particular: (1) summon anyone, in particular any Member and/or former Member of the Assembly, while respecting their parliamentary status, and any member of the Assembly secretariat, to give evidence; (2) hear any witness wishing to be heard by the Investigation Body; (3) request the assistance of any national authority of a member State; and (4) request the provision of any document it deemed relevant for its investigation. It should be noted, however, that the Investigation Body did not have the investigative powers exercised by

http://www.sudinfo.be/1933797/article/2017-09-12/une-asbl-belge-financee-par-l-azerbaidjan-alain-destexhe-dement-toute-implicatio?utm_source=dlvr.it&utm_medium=twitter

(last accessed on 15 February 2018).

²⁵ <http://www.sueddeutsche.de/politik/bundestag-die-aserbaischan-connection-1.3671979>

(last accessed on 15 February 2018).

<http://www.tagesspiegel.de/politik/lobbyarbeit-fuer-aserbaischan-druck-auf-cdu-politikerin-strenz-wegen-baku-connection/20351900.html> (last accessed on 15 February 2018).

http://www.deutschlandfunk.de/ungeklaerte-zahlungen-die-baku-connection-der-abgeordneten.1773.de.html?dram:article_id=396278 (last accessed on 15 February 2018).

<https://www.swr.de/swr2/bundestagsabgeordnetestrenz-zahlungen-aus-aserbaischan/-/id=7576/did=20309740/nid=7576/1ntmejr/index.html> (last accessed on 15 February 2018).

<https://www.svz.de/regionales/mecklenburg-vorpommern/strenz-auf-tauchstation-id17874991.html> (last accessed on 15 February 2018).

<http://www.spiegel.de/politik/deutschland/cdu-csu-die-union-und-ihre-dubiosen-aserbaischan-verbindungen-a-1174884.html> (last accessed on 15 February 2018).

²⁶ See section I.D of the Facts part of the report.

²⁷ See further <http://www.lalibre.be/actu/politique-belge/une-information-judiciaire-ouverte-a-l-egard-d-alain-destexhe-5a1ec895cd70657dbd13fb85> (last accessed on 15 February 2018).

²⁸ See section III of the Facts part of the report.

certain other investigative authorities, such as on-the-spot checks, searches of premises, or digital forensic operations.²⁹

Pursuant to the terms of reference, Members and honorary Members of the Assembly were required to co-operate fully with the Investigation Body, in the exercise of its mission and at every stage of its investigation. They were required to provide any information demanded of them and any document in their possession. The taking of evidence from Members and former Members of the Assembly was conducted with due regard to their parliamentary status.

When giving evidence, members of the COE secretariat, including the Assembly secretariat, were covered by the provisions of Rule No. 1327 of the Secretary General of the Council of Europe of 10 January 2011 on awareness and prevention of fraud and corruption.³⁰ These provisions also applied to any witness heard by the Investigation Body who, although not a member of the COE secretariat, participated in COE activities, wherever they might be carried out, in particular trainees, experts and consultants.

The rules governing access to, holding of and exploitation of COE documents applied to the Investigation Body. The Secretary General of the COE was required to facilitate the mission of the investigation body by putting at its disposal the documents, of any kind, which the body considered necessary.³¹ The Investigation Body was authorised to make use of confidential or restricted documents to the extent that they were directly related to the investigation with which it was tasked.

The terms of reference also invited Council of Europe member States to facilitate the mission of the Investigation Body and, in particular, to guarantee the freedom of movement of its members within their respective territory.

Under the terms of reference, any refusal to co-operate with the Investigation Body, or any refusal to disclose information or to give access to or transmit any document necessary to carry out its duties, was to be reported in the final report.

As appears from the mandate, the Investigation Body had no jurisdictional competence. It was not a judicial body and did not conduct judicial proceedings. The work of the investigation body was carried out in accordance with the principle of utmost confidentiality.

The particular procedural steps taken by the Investigation Body in carrying out its review are fully set out in Appendix II to this report. In summary, the Investigation Body held a series of sessions for the hearing of witnesses in Strasbourg. The witnesses were heard either in person before the body or via a secured video-link. The Investigation Body also made a series of detailed requests for information in writing from the PACE secretariat, individuals, international organisations and national authorities. The Investigation Body has conducted a fact-finding mission in the field and has instructed its secretariat to conduct several meetings on the operational level with various COE and EU institutions. It has also several times issued open calls to all those wishing to provide any

²⁹ See, for instance, on the OLAF investigation procedures: “Guidelines on Investigation Procedures for OLAF Staff”, 1 October 2013, available at https://ec.europa.eu/anti-fraud/sites/antifraud/files/docs/body/gip_18092013_en.pdf (last accessed on 15 February 2018).

³⁰ Available at <https://wcd.coe.int/ViewDoc.jsp?p=&id=1728717&direct=true> (last accessed on 15 February 2018).

³¹ The Secretary General also issued a call to all secretariat members of the Council of Europe to cooperate with the Investigation Body on the matters falling within its mandate. This call was distributed to all administrative entities within the Council of Europe.

documentary, testimonial and/or material evidence necessary for the fulfilment of its mission. On 14-16 March 2018 the Investigation Body met for the purpose of the preparation of the report.

The legal framework for the Investigation Body's work was set out in section 15 of its terms of reference, according to which, in drafting its recommendations, the Investigation Body should refer to the ethical standards in force in the Assembly and should take account of the case-law of the ECtHR and the work of GRECO, MONEYVAL and the Venice Commission. In so far as relevant for the issues arising in the context of its assessment, the Investigation Body reviewed the relevant standards and work of these bodies related to the fight against corruption and fostering of interests, parliamentary immunities, and the conduct of politically exposed persons. Moreover, in view of the issues falling within the ambit of its mandate, for the sake of completeness, the Investigation Body had regard to other relevant international material related to the issues of corruption and fostering of interests developed by the UN, COE, EU, OECD, OSCE and by the NGO Transparency International. The relevant PACE ethical standards, which, pursuant to its mandate, served as reference legal sources to its work, are set out in the body of the report. Other sources taken into account and considered by the Investigation Body are set out in detail in Appendix VI to this report.

The Investigation Body would note that the majority of witnesses invited to give oral and/or documentary evidence responded positively to such requests. It also notes that a number of MPs and COE staff members responded to open calls for the provision of evidence.

The Investigation Body also notes with regret, however, that several witnesses invited to give evidence to the body openly refused to cooperate or failed to reply to the body's repeated requests to appear before it or to letters of clarification sent by the body or provided explanations for failing to appear which lacked credibility or substantiation. A list of those who were summoned but failed or refused to appear before the body is set out in Appendix II to the report. The Investigation Body's findings on their failure to cooperate are elaborated in its assessment further below.

The Investigation Body would wish to record its appreciation of the invaluable assistance given to it by the staff members of the Registry of the ECtHR and its Registrar Mr Roderick Liddell. The Investigation Body also expresses its gratitude for the work of the COE technicians, interpreters and translators which was of the highest quality.

The Investigation Body would also acknowledge the assistance of the Secretary General of PACE, Mr Wojciech Sawicki, and his staff in the provision of evidence and in securing access to relevant information. It would also like to commend the assistance it received during the course of its work from representatives of the COE member States, notably those of Austria, Belgium, Italy, Norway, Slovenia and the United Kingdom.

D. The Investigation Body's report

The Investigation Body's report has been produced in accordance with section 12 of its terms of reference. The report has been prepared in English and translated into French by the COE translation services under the supervision of the Investigation Body's secretariat.

Following a careful review of the information obtained and consideration of all the relevant implications of making this information available in the report, the Investigation Body did not consider that there was any part of the report that should be made confidential, as provided for in section 12 of its terms of reference.

However, the Investigation Body has decided that the names of the PACE secretariat members would not be disclosed in the report with regard to the particular information that they provided.

Nevertheless, it has decided to provide a full list of persons, including the PACE secretariat staff members, who had appeared before it. In this connection, the Investigation Body would like to stress the need for securing the respect of the rights of those appearing before it, particularly concerning the protection of whistle-blowers, in accordance with sections 20 and 21 of its terms of reference and the relevant case-law of the ECtHR (see paragraph 801 below).

With regard to the archiving of the material obtained in the course of the investigation and used for the preparation of the report, the Investigation Body has decided that this material would remain confidential and would be kept sealed in the Registry of the ECtHR for thirty years. For this purpose, an agreement has been signed with the Registrar of the ECtHR.

After the expiry of the thirty-year period, the material will be declassified and treated like other declassified material prepared within COE.

Within the period before declassification, particular items of information and evidence may exceptionally be disclosed and made available only to the national judicial authorities in the context of ongoing criminal investigations or proceedings upon a specific and reasoned request (section 9 of the terms of reference), subject to the condition that the information disclosed would be used exclusively in such investigation or proceedings.

The procedure for processing of any such possible request for disclosure of information and evidence has been agreed with the Registrar of the ECtHR in accordance with the Investigation Body's terms of reference.

The Investigation Body also considers that following the termination of its mandate the rule of confidentiality, set out in section 11 of its terms of reference, continues to bind the members of its secretariat and all other COE staff members who had assisted it in its work, with the consequence that such members cannot be required to disclose to any person any information obtained in assisting the body.

The Investigation Body would emphasise that its descriptions of the facts emerging from the investigation and its assessment of those facts should not be interpreted as prejudging any facts that may be found or any assessment made in any domestic investigation, trial or other procedure for establishing the responsibility of any person to whom reference is made.

THE FACTS

I. ALLEGATIONS OF CORRUPTION WITHIN THE PARLIAMENTARY ASSEMBLY

A. The ESI reports

1. Background information on the ESI work on Azerbaijan

1. ESI is a think-tank, non-profit-making organisation set up to provide the relevant policy makers with strategic analysis on the Balkans, Turkey, Central Europe and the South Caucasus. It was established under German law in 1999 and has its seat in Berlin. ESI's main decision-making body is the assembly of members, which elects a three-member executive board from among the members and determines the general priorities of ESI research and activities. Currently, there are seven members of ESI, three of whom are members of its executive board.³² In addition, there is a network of people called "friends of ESI" who meet once a year to provide input and put forward ideas on the matters dealt with by ESI. Many members and friends of ESI have current or former institutional affiliations to governments, the NGO sector, the private sector, international organisations and academia.³³

2. The funding of ESI is based on a network of strategic partners and supporters, which includes various actors from the governmental, non-governmental and private sectors. The ESI website indicates that its activities on capacity building in the Caucasus were supported by the Open Society Institute, which was one of ESI's major core funders.³⁴ The website also indicates that the ESI work on Azerbaijan was supported by the Foundation to Promote Open Society.³⁵ Mr Gerald Knaus, Chairman of ESI, in his oral evidence given to the Investigation Body, explained that the major donor of ESI was the Swedish Government and that funds were also received from the Government of the Netherlands. He stressed that the biggest private donors were a German and an Austrian foundation. According to him, in the past five years ESI's budget had amounted to EUR 2.8 million.³⁶

3. With regard to allegations made in the ESISC reports that ESI's activity has been orchestrated by Mr George Soros and aimed at destabilising Azerbaijan in favour of the Armenian cause (see paragraphs 33-37 below), Knaus firstly explained that ESI had never received money from Armenia and had only once produced a report on Armenia, which concerned an issue of genocide. According to Mr Knaus, the George Soros Foundation had funded sixteen percent of the overall ESI budget that had been intended for work on Albania, some general work on the EU and other work on human rights. Mr Knaus stressed that the George Soros Foundation still funded about twenty percent of

³² Gerald Knaus (Chairman); Kristof Bender (Deputy Chairman); Alexandra Stiglmayer (General Secretary).

³³ ESI website <http://www.esiweb.org/index.php?lang=en&id=11> (last accessed on 15 February 2018); Gerald Knaus' oral evidence (6 September 2017).

³⁴ Further details available at ESI website <http://www.esiweb.org/index.php?lang=en&id=65> (last accessed on 15 February 2018).

³⁵ The original text taken from the ESI website provides as follows: "The [Foundation to Promote Open Society](http://www.esiweb.org/index.php?lang=en&id=65) supports our work to promote reform of key European institutions and to ensure a more robust [response to human rights violations](http://www.esiweb.org/index.php?lang=en&id=65), most notably politically-motivated detentions and torture" (available at <http://www.esiweb.org/index.php?lang=en&id=65>, last accessed on 15 February 2018). The hyperlinked reference in the cited text leads to the ESI website section concerning the ESI work on Azerbaijan.

³⁶ Gerald Knaus' oral evidence (6 September 2017).

ESI's current budget, and that in 2012, at the time of the first ESI report, it had made a contribution of some EUR 39,000. Mr Knaus also stated that when ESI had first started its work in Azerbaijan, that had been welcomed by the national authorities. At the time, the fact that ESI had been partly funded by organisations affiliated with Mr Soros had not drawn any criticism.³⁷

4. According to Mr Knaus, the reason why ESI had produced the reports on Azerbaijan's "caviar diplomacy" was that since 2009 they had started noticing an autocratic development in the country, in particular the arrest of two of their local colleagues and the closure of some NGOs. ESI considered that Azerbaijan had been a test case for the EU and the Council of Europe. They had produced a first report on Azerbaijan in 2011 entitled "Generation Facebook in Baku",³⁸ concerning a young generation of political dissidents in the country. At the same time, ESI had realised that within PACE there had been less and less criticism of Azerbaijan, despite the fact that the repression had been increasing, which had prompted them to look into the matter.³⁹

5. With regard to the methodology of the ESI reports, Mr Knaus explained that ESI had spoken only to those who had adopted a critical approach towards Azerbaijan. In addition, ESI had also attempted to reconstruct the pattern of voting within PACE and of the monitoring missions concerning that country. Mr Knaus stated that ESI had not attempted to speak to MPs who were considered as "apologists" for Azerbaijan. In his view, their positions vis-à-vis Azerbaijan had already been clear from their numerous public statements and some of them (Mr Knaus mentioned Mr Agramunt) had refused to meet with other NGOs or had only met with them in large groups. Mr Knaus also explained that ESI had omitted the names of its sources from the reports, citing security reasons. He gave the example of one ESI contact who had specifically feared for the life of his children.⁴⁰

2. The 2012 ESI report on "Caviar diplomacy"

6. In the report, ESI suggested that the Azerbaijani "caviar diplomacy" had begun in 2001, not long after the country had joined the Council of Europe. It had gathered speed after the election of Mr Ilham Aliyev as President of Azerbaijan in 2003, and gained full momentum after the completion of the Baku-Tbilisi-Ceyhan oil pipeline, which had brought significant prosperity to Azerbaijan. The Council of Europe had been a target of this "caviar diplomacy", since for Azerbaijan membership of the Council of Europe had meant being part of the European family.

7. The report in particular suggested that corruption had played a part in PACE activities concerning Azerbaijan. It relied on an unidentified source,⁴¹ alleging that there had been a systematic policy of gaining influence in PACE by offering at every session, four times a year, at least 0.4 to 0.6 kilograms of caviar to ten or twelve "key friends" of Azerbaijan in PACE and to another three or four members of the secretariat.⁴² Moreover, some MPs had been regularly invited to

³⁷ Gerald Knaus' oral evidence (6 September 2017).

³⁸ Available at http://www.esiweb.org/pdf/esi_document_id_128.pdf (last accessed on 15 February 2018).

³⁹ Gerald Knaus' oral evidence (6 September 2017).

⁴⁰ Ibid.

⁴¹ In his oral evidence Mr Knaus explained that this source had been an Azerbaijani official whose name he refused to disclose to the Investigation Body on the grounds that it was the person who was in fear for the life of his children (see paragraph 5 above). Mr Knaus denied that this information would come from Mr Arif Mammadov, the former Ambassador of Azerbaijan to the Council of Europe, who later became political dissident.

⁴² The SG PACE Mr Sawicki sent a letter to ESI asking to be provided with evidence concerning the allegations of corruption made against the secretariat. No reply was received. In his oral evidence given to the

Azerbaijan and generously paid. In a normal year, at least thirty to forty would be invited, some of them repeatedly. Some had been invited to conferences and events; others for summer vacations, and offered many expensive gifts. Gifts had mostly consisted of expensive silk carpets, gold and silver items, drinks, caviar and money. In Baku, a common gift had been two kilograms of caviar. However, the report also accepted that not everybody who had defended Azerbaijan in PACE had done so for material benefit; there had been other factors at play, including geopolitical considerations.

8. Against the above background, the ESI report provided a comprehensive overview of the circumstances in which Azerbaijan had joined the Council of Europe, including the commitments it had made on that occasion. It also referred to the ODIHR and PACE criticism of a lack of standards on free and fair elections concerning the November 2000 parliamentary elections and the October 2003 presidential election in Azerbaijan. The report further explained how in 2001 Mr Andreas Gross (Switzerland) and Mr Guillermo Martínez Casañ (Spain) had become co-rapporteurs on Azerbaijan in the PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (“Monitoring Committee”) and Mr Georges Clerfayt (Belgium) rapporteur in the Committee on Legal Affairs and Human Rights on the issue of political prisoners in Azerbaijan. According to the ESI report, Mr Gross and Mr Clerfayt had been determined to remind the Azerbaijani authorities of their obligations. At the same time, there had been tension between Mr Gross and Mr Martínez Casañ in that Mr Gross had felt that Mr Martínez Casañ had tried to stop him being too critical. However, in 2004 Mr Martínez Casañ had been replaced as co-rapporteur by Mr Andres Herkel (Estonia), who joined Mr Gross in strongly worded criticism of the lack of democratic standards in Azerbaijan.

9. The ESI report suggested that the November 2005 parliamentary elections in Azerbaijan had been a test case for the democratic standards in the country. However, PACE had found that those elections had fallen short of the requirements of fair and free elections. Sanctions had therefore been proposed by Mr Gross in that in January 2006 he had tabled a motion challenging the credentials of the newly elected Azerbaijani delegation to PACE. This had not, however, been supported in the Monitoring Committee, where a narrow majority had opted for a softer resolution on the matter. The draft resolution had then been discussed at the PACE plenary session, where completely opposing views on the matter had been expressed. On the one hand, a group of MPs, which included Mr Tony Lloyd (UK), Mr Leo Platvoet (the Netherlands), Mr Gross and Mr Herkel, wanted to have at least some sanction applied against the Azerbaijani delegation, namely the suspension of the voting rights of its members in the Assembly and its committees until convincing and substantial progress had been made in all the areas where a lack of democratic standards had been identified. Another group of MPs, on the other hand, strongly opposed any such suggestion and defended the authorities in Azerbaijan. The latter group of MPs included Mr Leonid Slutsky (Russia), Mr Michael Hancock (UK), Mr Robert Walter (UK), Mr Eduard Lintner (Germany), Mr Mevlüt Çavuşoğlu (Turkey) and the delegates from Azerbaijan. Eventually, the proposal on the withdrawal of voting rights of the Azerbaijani delegation had been rejected, but a strongly worded

Investigation Body, Mr Knaus explained that the ESI source had given some names of people who had been receiving gifts but ESI had decided not to use those names because it was not sure about the accuracy of the information. Mr Knaus, however, had no doubt about the fact that the events of the kind as alleged by the ESI source had taken place.

resolution had been adopted.⁴³ According to the ESI report, those events constituted a turning point in PACE's relationship with Azerbaijan.

10. The ESI report further pointed to different areas in which Azerbaijan had not fully met its commitments as a COE member State, concerning notably media freedom, the issue of political prisoners, election regulations and the independent functioning of State and other institutions in the country, which the report then weighed against the lack of an effective response in the COE. It also elaborated on how different PACE MPs, who had been seen as friends and frequent guests of Baku, such as Mr Hancock and Ms Kristiina Ojulang (Finland), had defended Azerbaijan's record in PACE. On the other hand, Mr Herkel had continued to be critical.

11. The ESI report explained how in October 2008 Mr Herkel had led the PACE election observation team for the presidential election in Azerbaijan. The report suggested that his team had included a large number of openly pro-Azerbaijan MPs, such as Mr Hancock, Ms Ojulang, Mr Paul Wille (Belgium), Mr Çavuşoğlu, Mr Lintner, Mr Igor Chernyshenko and Mr Yury Zelenskiy (both from Russia) and Mr Walter. The ESI argued that the adoption of the final report on the 2008 election had shown a strong division within PACE. In particular, on the day of the election Mr Hancock had given a statement to the Azerbaijani media, praising the electoral process before the election day had finished.⁴⁴ He had later, together with Mr Lintner and Mr Wille, pushed for a more positive statement from PACE than the one agreed between Mr Herkel and the ODIHR team. Eventually, the final statement on the election, retaining a critical remark on media freedoms, as insisted on by Mr Herkel, had been adopted with a narrow majority. In the final press conference Mr Hancock and Mr Wille had openly protested against part of the statement.

12. Another of PACE's activities in respect of Azerbaijan examined by ESI was the observation of the March 2009 constitutional referendum in the country. The report suggested that all the members of the election observation team (Mr Lintner (head of the team), Mr Wille, Mr Hakki Keskin (Germany) and Mr Agramunt) had supported Azerbaijan and that the final statement had not been sufficiently critical of the Azerbaijani authorities.

13. ESI also examined how the candidature of Ms Lise Christoffersen (Norway) for the position of co-rapporteur on Azerbaijan in the Monitoring Committee had failed in 2009. The report suggested that Ms Christoffersen's candidacy, initially supported by her Socialist Group, had failed because there had been a mobilisation of the supporters of Azerbaijan, notably Mr Hancock, Mr Lintner and Mr Agramunt, to have "their" candidate elected for the post. That was how Mr Debono Grech had been elected. Similarly, on the side of the EPP, Ms Marietta de Pourbaix-Lundin (Sweden) had expressed her interest in the position of co-rapporteur in the Monitoring Committee on Azerbaijan, but she had been persuaded by Mr Agramunt to withdraw her candidature for the post. Mr Agramunt had later become co-rapporteur on Azerbaijan himself. According to the ESI report, following Mr Agramunt's and Mr Debono Grech's appointments in the Monitoring Committee, the tone and attitude towards the Azerbaijani authorities had softened.

⁴³ See further Resolution 1480 (2006) "The challenge of still unratified credentials of the parliamentary delegation of Azerbaijan on substantial grounds", 25 January 2006 (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17402&lang=en>, last accessed on 15 February 2018). See also Resolution 1505 (2006) on "Implementation of Resolution 1480 (2006) on the challenge of credentials of the parliamentary delegation of Azerbaijan", 26 June 2006, expressing concerns about a number of required measures not implemented by the Azerbaijani authorities.

⁴⁴ The media report available at <http://www.today.az/news/politics/48240.html> (last accessed on 15 February 2018).

14. The ESI report also focussed on the November 2010 parliamentary elections in Azerbaijan, which ESI found indicative in showing how the attitude towards the elections in Azerbaijan had shifted from a critical one in 2005 to a positive one in 2010. The report explained how ODIHR, led by Ms Audrey Glover, had had a long-term election observation mission in the country, which had started its work as early as September 2010, and how it had been concerned about the lack of democratic standards for the holding of free and fair elections in the country. In addition, there had been different short-term election observation missions, which had arrived in the country a few days before election day. Among them, the most prominent had been: the OSCE-PA (led by Mr Wolfgang Grossruck (Austria)), ODIHR, PACE, and the EP (led by Ms Anneli Jaatteenmaki (Finland)). The ESI report suggested that there had been a major disagreement between the PACE election observation mission, led by Mr Wille and Mr Tadeusz Iwiński (Poland), and ODIHR. In particular, ODIHR had presented to the other international observers an elaborate pre-election analysis, but Mr Wille and Mr Iwiński, supported by Mr Grossruck from the OSCE-PA, had wanted to focus on election day itself and to shorten the ODIHR report. They had also pressed for recognition of “progress” in the country. According to the ESI report, relying on the ODIHR report on the November 2010 elections, a number of breaches of the electoral process and rigged elections had come to light on election day. Nevertheless, Mr Wille had presented a draft statement on the elections, pointing out that the election process had been administered properly. In the evening of election day, he had given a statement to the media to the same effect. The final meeting of the international election observers on the Monday morning following election day had been marked by a stark difference of opinion between Mr Wille and Ms Glover.

15. Eventually, a compromise statement had been adopted but, according to ESI, that statement had been ambiguous, as had the statements made by Mr Grossruck, Mr Wille and Ms Jaatteenmaki at the official press conference concerning the elections. On the other hand, the statement by Ms Glover had been critical of the way in which the elections had been conducted. At the press conference, a question had been raised of the possibility that bribes had played a role in the final assessment of the elections. Ms Glover had adamantly denied that she personally had been bribed.⁴⁵ This had eventually led to a protest by Mr Grossruck to the Chairman of the OSCE, accusing ODIHR of a lack of professionalism and reliability. He also complained that the manner in which Ms Glover had replied to the question on bribes had suggested that she had not excluded the possibility that other members of the international election observation mission had been bribed. In PACE, when presenting the final report on the election observation mission, Mr Iwiński had also complained of the manner in which the cooperation with ODIHR had unfolded. According to the ESI report, this had shifted the emphasis from election fraud to the absence of a political consensus.

3. ESI reports on the Strässer affair

16. The first ESI report on the Strässer affair focused on a debate in the PACE plenary session on the Strässer report concerning the definition of “political prisoner”. An amendment had been proposed to that report, according to which the interpretation and application of any criteria

⁴⁵ Transcripts of the press conference available at: http://azerireport.com/index.php?option=com_content&task=view&id=2538 (last accessed on 15 February 2018). It should be noted that Mr Wille, with regard to a question about bribes, stated that such a question “offend[ed] the integrity of [observers]” without directly and clearly rejecting the allegation.

defining a political prisoner would be the exclusive competence of the ECtHR. This was known as “Amendment 2”.

17. The ESI report suggested that some remarkable things had happened concerning the Strässer report on the definition of political prisoners, in that a number of PACE MPs had changed their minds on it. They had started to argue that such a report should not be adopted and had sought to limit PACE’s authority in the matter. The ESI report submitted that those who had changed their minds had been some of the most prominent apologists for Azerbaijan, notably Mr Hancock, Mr Iwiński, Mr Patrick Moriau (Belgium), and Mr Agustín Conde (Spain). For the ESI, the debate on the definition of political prisoners had turned into a debate about the very legitimacy of any assessment of fundamental rights and freedoms in PACE. Against this background, the ESI report reproduced particular excerpts from the PACE plenary debate and pointed to the way in which PACE members had voted on Amendment 2 to the Strässer report.

18. The second ESI report on the Strässer affair concerned the vote in the PACE plenary session on the resolution on political prisoners in Azerbaijan, prepared on the basis of the Strässer report, and the manner in which it had been rejected. For ESI, this was a very strong signal of support for the authorities in Baku.

19. The ESI report argued that a long campaign had been waged against Mr Strässer, led by the Azerbaijani authorities. For ESI, the most egregious fact was that Mr Strässer had been refused a visa to enter Azerbaijan as a PACE rapporteur. The ESI report stated that there had been an extraordinary presence in the Assembly when the Strässer report had been discussed: all Russian MPs had been present and had sided with Azerbaijan, as had a number of Turkish, Spanish and Italian, and a majority of the United Kingdom, Ukrainian and French MPs. The report also pointed to the fact that in parallel to the rejection of the Strässer report, PACE had adopted a report of the co-rapporteurs in the Monitoring Committee, Mr Agramunt and Mr Debono Grech, which also dealt with the issue of political prisoners, and that this report had been praised by the Azerbaijani representatives.⁴⁶ In ESI’s view, the PACE debate on the Strässer report was to stand as a reminder of how successfully Azerbaijan had been able to capture and manipulate PACE. Against this background, the ESI report reproduced particular excerpts from the PACE plenary debate and highlighted the manner in which PACE had voted on the Strässer report on political prisoners in Azerbaijan.

4. ESI report on the October 2013 presidential election in Azerbaijan

20. The ESI report on the October 2013 presidential election in Azerbaijan provided a critical assessment of the short-term international observation mission’s findings and supported more critical views expressed by ODIHR, which had both long-term and short-term election observation missions in the country. According to ESI, the short-term international observation mission had legitimised unfair elections in which Mr Ilham Aliyev had been elected President of Azerbaijan.

21. In particular, the ESI report pointed to the divergent findings of the PACE election observation mission (led by Mr Walter) and the EP mission (led by Mr Pino Arlacchi) on the one side, which had issued a positive assessment of the manner in which the election had been conducted, and, on the other side, ODIHR, which had found that the electoral process had not been free and fair. According to the ESI report, the disagreement had already started before election day, in that

⁴⁶ On the substance of this report, in January 2013 the ESI published another report entitled “A Portrait of Deception: Monitoring Azerbaijan or Why Pedro Agramunt should resign” (available at http://www.esiweb.org/pdf/esi_document_id_134.pdf, last accessed on 15 February 2018).

Mr Walter and Mr Arlacchi had been reluctant to accept ODIHR's critical draft statement on the overall political situation in the country. In the afternoon of election day itself, a slightly modified draft of ODIHR's statement had been presented to Mr Walter and Mr Arlacchi, but they had again refused to accept it. Eventually, Mr Walter had proposed that two post-election-day statements be issued, one by ODIHR alone, summing up its pre-election findings, and a joint one by PACE, the EP, the OSCE-PA and ODIHR on election day itself. However, this had been unacceptable to ODIHR, which believed that election day was only the tip of the iceberg and that a report on the elections could not focus only on that. Eventually, in the early evening of election day, the heads of the PACE and EP delegations had decided to break with the ODIHR and OSCE-PA observers and to present their own statement. Although ODIHR/OSCE had at first presented a statement indicating that the election had been seriously flawed, one of their representatives, Mr Michel Voisin, had issued a separate statement disagreeing with that finding.

22. The ESI report also looked into the structure of other international election observation missions tasked with observing the presidential election in Azerbaijan. It pointed to the restricted capacity of the election observation missions sent by the Italian, French and Czech senates and called into question the impartiality of some of the international observers. In particular, the ESI report referred to Ms Ojuland, who had observed the election at the invitation of the Azerbaijani Parliament and whom ESI regarded as a supporter of the Azerbaijani regime. The ESI report also mentioned former PACE MP Mr Lintner, who had founded a lobbying association in favour of Azerbaijan that had had a team of observers at the presidential election. A reference was also made in the ESI report to the "European Academy of Election Observation" (EAEO), an organisation run by former PACE MP Mr Stef Goris (Belgium), which had taken part in the observation of the 2010 parliamentary elections and 2013 presidential election and was thereby supported by Mr Lintner's organisation. Moreover, the ESI report suggested that a number of MEPs had special links and relationships with Azerbaijan. With regard to PACE, the report stated that Mr Walter, head of the PACE delegation, chaired a political group in PACE that included President Aliyev's New Azerbaijan Party, and that he had led a high-level British trade mission to Baku to investigate business opportunities, which had been fully supported by the Azerbaijani lobby group "European Azerbaijani Society" (TEAS).

5. The 2016 ESI report on "Caviar diplomacy"

23. The 2016 ESI report suggested that Azerbaijan's lobbyists had been preparing for their biggest lobbying activity at about the time when Azerbaijan had taken over the chairmanship of the Council of Europe's Committee of Ministers in 2014. According to the ESI report, expensive carpets worth thousands of euros had been given as gifts; so many that one Azerbaijani embassy had had its own room for them. Gifts given to politicians had also included luxury electronic goods, watches and jewellery, paid holidays, prostitutes and also large sums of money given in cash or transferred via anonymous companies. According to the ESI report, Azerbaijan's chief lobbyist in Europe was Mr Suleymanov.

24. The ESI report based its conclusions on the case of Mr Volontè and his links to Mr Suleymanov. The report suggested that Mr Volontè, who had expressed surprise and sadness over the allegations made in the 2012 ESI report, had in fact travelled to Azerbaijan in April 2012 to meet with Mr Suleymanov and Mr Muslum Mammadov, whom the ESI report described as "Suleymanov's collaborator and 'envelope carrier'". The reason for his trip had been to present his

ideas on how to boost Azerbaijan's image in advance of its presidency of the COE Committee of Ministers in May 2014. Furthermore, according to the ESI report, in November 2012 Mr Volontè had drawn up two sets of instructions for Mr Muslum Mammadov. The first included the bank details of his foundation – called Novae Terrae – and a demand for EUR 100,000 as well as a reference to a monthly stipend of EUR 30,000 for Mr Volontè, to be paid half in cash in EUR 50 and EUR 100 banknotes and half through bank transfers to an account of the company LGV, set up a few weeks earlier by Mr Volontè in the name of his wife. The second referred to EUR 250,000 to be transferred to LGV. In December 2012 two bank transfers had been made: one in the amount of EUR 100,000 to the bank account of the Novae Terrae Foundation, and the other in the amount of EUR 220,000 from two companies – Metastar Invest (registered in Birmingham, UK) and Jetfield Network Limited (registered in the Marshall Islands). The latter transfer had reached Italy via two banks in Estonia and Latvia. The purpose of the first transfer had been indicated as “Fir consulting Service” (*sic*).

25. Against this background, the ESI report suggested that Mr Suleymanov and Mr Mammadov, through Mr Volontè, had made efforts to form a coalition among PACE members against the Strässer report on the issue of political prisoners in Azerbaijan. For this purpose, in November 2012 Mr Volontè had contacted Mr Agramunt, advising him how to proceed with the matter in the Monitoring Committee. In December 2012 he had written to Mr Mammadov suggesting that it was necessary to “name a lot of friends during the debate [on the Strässer report] and nominate one person for each of our political groups”. Amongst those persons, Mr Volontè mentioned Mr Luigi Vitali (Italy), Mr Iwiński, Mr Hancock, Mr Walter and Mr Jordi Xuclà (Spain). There had also been discussion between Mr Volontè and Mr Mammadov on the necessity of ensuring that an adequate number of MPs participated in the voting on the Strässer report.

26. Eventually, after the Strässer report on the issue of political prisoners in Azerbaijan had been defeated in PACE, Mr Volontè continued, according to ESI, to communicate with Mr Suleymanov and Mr Mammadov and to receive payments from Azerbaijan. In particular, in an email exchange with Mr Suleymanov, he had asked Mr Suleymanov whether he had forgotten him after his victory and Mr Suleymanov had answered that he would surprise Mr Volontè with the expression of his respect. Mr Volontè had also proposed a new PACE report on the issue of political prisoners, but then a day later he had sought to withdraw his proposal and had sent an email to Mr Mammadov in which he had said that Mr Mammadov's wish was his command. According to ESI, in the ensuing period up until 31 December 2014, Mr Volontè had received more than EUR 2 million from Azerbaijan. However, two bank transfers to LGV in December 2012 and March 2013 in the amounts of EUR 220,000 and EUR 180,000 respectively, which Mr Volontè could not explain, had aroused suspicion within the Banco di Credito Cooperativo of Barlassina and had led to the opening of a criminal investigation against him in Italy.

27. The ESI report also provided excerpts from a RAI 3 television report in which Mr Volontè had explained that the above-noted payments related to a consultancy agreement made with Mr Suleymanov set to last for ten years, under which one million euros would be paid each year. Mr Volontè acknowledged that he had initially told the Banco di Credito Cooperativo that the payment concerned a consultancy on agricultural issues, but later claimed that that had been the result of a misunderstanding between him and his accountant. The television report had also featured an interview with Mr Luigi Vitali, who had denied receiving any payment of money but had acknowledged receiving “a tin of caviar” from Mr Suleymanov. In ESI's view, all this had undermined the very essence of the mission assigned to the Council of Europe and it was therefore necessary to take measures to suppress practices of corruption and fostering of interests.

B. The ESISC reports

1. Background information on ESISC's work

28. ESISC is a consultancy company that was established in 2002 in Brussels. It specialises in the collection and analysis of sources of intelligence in the areas of security, geopolitics and economy, on the basis of which it produces customised reports, analysis and briefings responding to the needs of its clients. It also has a lobbying branch focusing on the European institutions, the national authorities of several countries, and international organisations such as the UN. However, according to ESISC director Mr Claude Moniquet, the lobbying part of ESISC's work was marginal and the choice of lobbying activity was always his own in the sense that he had never been paid or pushed to support a cause in which he did not believe. In addition, ESISC provides training in different areas. According to its website, it has an international, multidisciplinary and multilingual team working on its projects; it also works with "handpicked" contractors.⁴⁷

29. Concerning the funding of ESISC reports, Mr Claude Moniquet, when heard by the Investigation Body, denied that ESISC had ever received any funding from Azerbaijan or any Azerbaijani entities. According to him, the funding came from ESISC's client companies, ninety percent of which were French. He had not questioned, however, whether those companies had any interests in Azerbaijan. Mr Moniquet also denied receiving any funds from other lobbying or similar organisations, such as those run by Mr Lintner and Mr Goris.⁴⁸

30. Mr Moniquet further explained that ESISC had previously been involved in the observation of elections in Azerbaijan. It had had a team of observers at the 2013 presidential election, the 2015 parliamentary elections and the 2016 referendum. Those election observation missions had been funded by a commercial company in the amount of some EUR 15,000 or EUR 20,000 per mission. When observing elections in Azerbaijan, ESISC had never spotted any irregularities.⁴⁹

31. With regard to the central contention of the ESISC reports that there was a network of NGOs which, through its connections within the Council of Europe, was leading a campaign against Azerbaijan for the benefit of Armenia and that everything was orchestrated by Mr Soros, Mr Moniquet stated that his findings had not been motivated by any anti-Armenian feeling, although, in his view, there was a problem with Armenia because of the illegal occupation of Nagorno-Karabakh.

32. According to Mr Moniquet, the ESISC reports were intended to expose the political agenda of some NGOs, whose financing was not transparent and who were conducting unfair campaigns against Azerbaijan on behalf of Armenia. He also claimed that in PACE, the pro-Armenian agenda against Azerbaijan was led by several MPs, whom ESISC wanted to expose for the sake of transparency. On the other hand, Mr Moniquet could not explain what had led him to conclude that Mr Soros and other persons or organisations referred to in his reports had a pro-Armenian agenda. It was a question that he was still investigating. He explained, however, that he did not think that Mr Soros had a pro-Armenian agenda but that his agenda was to destabilise some countries so that he could reap economic benefits from that.⁵⁰

⁴⁷ ESISC website (available at <http://www.esisc.org/> (last accessed on 15 February 2018), and Claude Moniquet's oral evidence (6 November 2017).

⁴⁸ Claude Moniquet's oral evidence (6 November 2017).

⁴⁹ Ibid.

⁵⁰ Ibid.

2. The ESISC reports

33. The first ESISC report suggested that there had been unilateral and untruthful attacks against Azerbaijan as part of a hidden political agenda to defend Armenia's occupation of the Nagorno-Karabakh region. It also made reference to an allegation made by Mr Volodymyr Arieu, head of the Ukrainian delegation to PACE, according to which he had been offered a bribe by Armenia not to mention the Armenian occupation of Nagorno-Karabakh in his report on the "Attacks against journalists and media freedom in Europe" that had led to the adoption of PACE Resolution 2141 (2017) on the matter.⁵¹ The ESISC report suggested that the "Arieu case" represented the tip of an iceberg of a systemic and preoccupying problem in PACE whereby certain MPs tried to influence the work of the organisation by unlawful means.⁵²

34. On the above grounds, the ESISC report built on the allegations of a network working to discredit Azerbaijan. According to the report, such an activity had started in 2012 when a new person, described as "Mr X", had taken up a high-level position in the COE. The report claimed that Mr Knaus from ESI was the mastermind behind the denounced operation against Azerbaijan. He was linked to Mr Strässer, and his NGO, ESI, was associated with the George Soros Foundation. Mr Soros for his part, the ESISC report suggested, had worked on libelling and destabilising Azerbaijan. He was linked to the American Armenian lobby, which sought to "play with Armenia in order to destabilise Azerbaijan". In such a constellation, according to the report, Mr Strässer had been recruited by Mr Knaus to play the role of an insider for the Armenian cause against Azerbaijan. In particular, Mr Strässer had liaised with Armenians and had participated in various "anti-Azeri" and "anti-Turkish" activities.

35. According to ESISC, another person in PACE who had supported the pro-Armenian agenda against Azerbaijan was Mr Pieter Omtzigt, a member of the Netherlands delegation to PACE. He was also linked to Mr Knaus and had collaborated with him on the "Caviar diplomacy 2" report. Someone else who was, according to ESISC, a member of the group recruited for the anti-Azerbaijani network was Mr Frank Schwabe, a German MP in PACE, who was very close to Mr Strässer and who had various connections with Armenians. In addition, the ESISC report made reference to French PACE MPs Mr François Rochebloine and Mr René Rouquet, who, according to the report and as also mentioned by Mr Moniquet in his oral evidence, had been instrumental in supporting the Armenian cause in PACE. The ESISC report also suggested that Mr Soros had been behind the RAI 3 television report on the allegations of corruption in PACE concerning Azerbaijan, in that he had financially supported various activities of Ms Milena Gabanelli, who had presented the report and who was, according to the ESISC, known as an old friend of Armenia.

36. The second ESISC report suggested that Mr X, referred to in its first report, was the former Council of Europe Commissioner for Human Rights, Mr Nils Muižnieks. According to ESISC, Mr Muižnieks was a pivotal figure in a network affiliated to or financed by the George Soros Foundation, working in the interests of Armenia and against Azerbaijan. The report submitted that Mr Muižnieks was closely linked to Mr Soros and had participated in various events against

⁵¹ Available at: <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnNveG1sL1hSZWYvWDJLURXLWV4dHIuYXNwP2ZpbGVpZD0yMzQwMCZsYW5nPUVO&xsl=aHR0cDovL3NiZWVudGlicGFjZS5uZXQvWHNSdC9QZGYvWFJlZi1XRClBVC1YUwYUERGlnhzbA==&xslparams=ZmlsZWlkPTlZNDAw> (last accessed on 15 February 2018).

⁵² The Investigation Body has heard evidence from Mr Volodymyr Arieu concerning the matter. Its findings are set out below.

Azerbaijan without ever denouncing Armenia's occupation of the Nagorno-Karabakh region. He had thereby sided with Mr Omtzigt, Mr Tiny Kox (the Netherlands), Mr Strässer and ESI in unfounded attacks against Azerbaijan. In addition to the names mentioned in its first report concerning people belonging to the "Armenian Network", ESISC argued that Mr Kox and SG PACE Mr Sawicki belonged to that group. The ESISC report further submitted that Mr John Dalhuisen from Amnesty International had worked closely with Mr Schwabe and ESI against the interests and image of Azerbaijan. The report also suggested that there was proximity between Mr Soros, who wanted to destabilise various countries in the Council of Europe, and the Secretary General of the Council of Europe Mr Thorbjørn Jagland.

37. In addition to the above-mentioned ESISC reports, on 25 January 2018 the Investigation Body received further reports from Mr Moniquet setting out his view of the situation in PACE, in which he reiterated the concerns expressed in the earlier ESISC reports.

C. The Freedom Files report

1. Background information on the Freedom Files' work

38. The Freedom Files is an NGO that belongs to the Civic Solidarity NGO platform. According to the Civic Solidarity website, the Freedom Files consists of a group of experts working to press governments in the post-Soviet era to better protect fundamental human rights and the environment. They analyse information about governments' records on human rights and the environment, and publish reports and policy papers to promote improvements in State policy. The group also makes recommendations to international organisations and international financial institutions. Priority areas of the Freedom Files' work include reform of international organisations.⁵³ According to Mr Yuri Dzhibladze and Ms Olga Zakharova, representatives of the Freedom Files, the focus of the Freedom Files' work was on investigations into matters within their sphere of interest. They also explained that although the Freedom Files' seat was formally in Warsaw, they actually worked in Moscow. The funding of their activities came from various individual contracts with other NGOs in Europe and the US.⁵⁴

39. With regard to the Freedom Files report "European Values Bought and Sold", Mr Dzhibladze and Ms Zakharova explained that the report was the result of an investigation conducted at the request of several Azerbaijani NGOs and other international NGOs that had observed discrepancies in the official PACE stance on Azerbaijan and that of other bodies focusing on the situation in the country. The funding for the report had come from two other NGOs.⁵⁵

40. As to the methodology of their report, Mr Dzhibladze and Ms Zakharova explained that their investigation had lasted for more than a year. They had inspected more than 2,000 documents and conducted more than forty interviews with various people from Azerbaijan, PACE and the EP, including staff members and MPs, as well as people from the German Bundestag. They had also studied declarations of gifts made to the UK Parliament. They had avoided dealing with rumours and although they had no direct evidence of corruption, in their view, their findings had been corroborated and complemented by recent media reports on financial transfers from Azerbaijan and

⁵³ Further information available at <http://www.civicsolidarity.org/member/161/freedom-files> (last accessed on 15 February 2018).

⁵⁴ Yuri Dzhibladze's and Olga Zakharova's oral evidence (5 September 2017).

⁵⁵ Ibid.

by information on US lobbying activities. For the Freedom Files, the key witness had been Mr Arif Mammadov, the former Azerbaijani Ambassador to the Council of Europe.⁵⁶ Mr Dzhibladze and Ms Zakharova further explained that they had interviewed only the “critics” of the Azerbaijani authorities and had not attempted to interview “apologists”. This was because they had been afraid of interference by the secret services and they had been advised by others not to contact any apologists because information could then be leaked to the Azerbaijani authorities.⁵⁷

2. The Freedom Files report

41. The Freedom Files report suggested that the Azerbaijani authorities had used various means of corruption and fostering of interests to withstand international pressure or, in many cases, to pre-empt and prevent criticism of their human rights record in order to boost the international image of Azerbaijan and to preserve their position in the country. According to the report, those activities of the Azerbaijani authorities had been a result of a system of international lobbying and a corruption network that had targeted various national and international authorities and decision-makers, including PACE. The report suggested that PACE had been the most affected by the lobbying and corruption activities. In particular, many key positions in PACE were filled by people who had systematically shielded the Government of Azerbaijan from criticism for violations of human rights. They included those of the President of the Assembly, the Chair of the Committee of Legal Affairs and Human Rights, and most of the rapporteurs on the human rights situation in Azerbaijan. Their position had given many observers reason to describe them as “apologists” for the regime in Baku.

42. According to the Freedom Files report, the key Azerbaijani lobbyist in PACE was Mr Suleymanov, who was involved in various ethically and legally questionable activities. He was assisted by Mr Muslum Mammadov. On the other hand, according to the report, there was a lobbying organisation called the European Azerbaijani Society (TEAS), which was a “semi-diplomatic entity” registered in the UK and which was considered as the “clean” part of the Azerbaijani lobbying machine. That organisation had been established by Mr Tale Heydarov, the son of Mr Kamaladdin Heydarov, Minister of Emergency Situations in the Azerbaijani Government.⁵⁸ According to Mr Dzhibladze and Ms Zakharova, the key institution providing funds for corruption in Azerbaijan was the Ministry of Emergency Situations, and Mr Kamaladdin Heydarov was an oligarch who was in charge of everything.⁵⁹

43. The Freedom Files report suggested that PACE had been a target of corruption because of the leading role played by the Council of Europe, including PACE, in addressing human rights and democracy issues. PACE also provided Azerbaijanis with easy access to members of national parliaments serving as PACE MPs. According to the report, the EPP Group in PACE was known as a citadel of Azerbaijan regime defenders. Also, a number of lobbyists, former members of PACE such

⁵⁶ The names of a number of other persons interviewed by the Freedom Files have been disclosed to the Investigation Body. However, Mr Dzhibladze and Ms Zakharova refused to disclose the name of one witness, an EP official, who was not willing to give evidence under any circumstances. In addition, one witness was sick and could not give evidence to the Investigation Body.

⁵⁷ Yuri Dzhibladze’s and Olga Zakharova’s oral evidence (5 September 2017).

⁵⁸ Further information on TEAS is available at <http://teas.eu/> (last accessed on 15 February 2018).

⁵⁹ Yuri Dzhibladze’s and Olga Zakharova’s oral evidence (5 September 2017). Information to the same effect was given by Mr Arif Mammadov (hearing on 10 October 2017) and Ms Leyla Yunus (hearing on 6 November 2017).

as Mr Lintner, had access to sessions of PACE in the COE building and could thus easily carry out their lobbying activities. The Freedom Files report denounced the lack of effective supervision mechanisms on the observance of the code of conduct in PACE. It also argued that relaxed rules in PACE had given many opportunities to turn PACE membership into a business. According to the report, this had been used by Mr Suleymanov, who had carried out lobbying activities in PACE as a proxy for Mr Kamaladdin Heydarov, while the head of the Azerbaijani delegation to PACE, Mr Samad Seyidov, had not apparently been involved in those activities.

44. The Freedom Files report further submitted that some PACE MPs had received luxury trips, gifts, receptions, offers of business opportunities and help in advancing their political careers. All of those persons had been bribed either by a gift or by cash, the price varying from EUR 50,000 for an active role in debates and voting, to EUR 200,000 for a political campaign to get elected to an influential position in PACE. The report also referred to a statement by Ms Leyla Yunus on how students from Azerbaijan had been bringing cash to Strasbourg to be used by Mr Suleymanov for his lobbying.⁶⁰ According to the report, those people who had enjoyed gifts from Azerbaijan had made themselves available for quick mobilisation on voting when needed, and when Azerbaijan-related issues were debated in PACE there was always an unusually high turnout of those MPs who would not usually attend sessions.

45. The Freedom Files report also drew links between the success in the political career of Mr Agramunt and his friendship with Azerbaijan. According to the report, Azerbaijan had been extremely supportive of his campaign for election to the position of PACE President and had allocated a considerable amount of money, allegedly EUR 200,000, to ensure his victory. Other MPs had received money to promote themselves for different positions that would allow them to control or influence resolutions in PACE, and consequently all of the important committees and the Bureau of PACE had been taken over by friends of Azerbaijan. Referring to a statement by Mr Arif Mammadov, EUR 30 million had allegedly been allocated for lobbying. The Freedom Files report also cited the example of Mr Debono Grech, a member of the Socialist Group in PACE, who had been elected to the position of rapporteur on Azerbaijan by the use of the “Azerbaijani PACE control system”. On the other hand, according to the report, those lobbying on behalf of Azerbaijan had ensured the defeat of the Strässer report on the issue of political prisoners in Azerbaijan.

46. The Freedom Files report further submitted that over the last several years when Azerbaijan’s lobbying activity had affected PACE the most, rapporteurs on the human rights situation in Azerbaijan had always been chosen from among friends of Azerbaijan. In this connection, the report cited the names of Mr Agramunt, Mr Conde, Mr Debono Grech, Mr Iwiński and Mr Forin Preda (Romania). The last of these names was a current co-rapporteur in the Monitoring Committee on Azerbaijan, together with Mr Stefan Schennach (Austria), whom the report described as a “decent rapporteur”. The two co-rapporteurs had often visited Azerbaijan and had issued some controversial statements, particularly through Mr Preda, on the human rights situation in the country. At the same time, in the Committee on Legal Affairs and Human Rights, which had been tasked with looking into, among other matters, the issue of political prisoners in Azerbaijan, Mr Agramunt had first been appointed rapporteur and then, following his appointment as President of PACE, Mr Alain Destexhe (Belgium) had taken over his position. According to the Freedom Files report, Mr Destexhe was a leading apologist for the Azerbaijani authorities and, as organiser of the EAEO, his task was to provide for “fake election observations”. The report also submitted that

⁶⁰ The Investigation Body heard evidence of Ms Leyla Yunus on this matter. See further section II below.

Mr Destexhe had travelled to Azerbaijan in 2016 where he had met President Aliyev and had received a very cordial welcome from him. They had subsequently discussed issues concerning the Formula 1 race organised at about the same time in Baku. For the Freedom Files, Mr Destexhe had not been sufficiently critical of the situation in Azerbaijan and had not worked genuinely on the issue of political prisoners in the country.

47. The Freedom Files report also stated that a number of PACE MPs or former MPs had been involved in fake election observation missions in favour of the Azerbaijani ruling elite, in an attempt to give international legitimacy to the rigged elections. The report cited the example of the French NGO, *Eurasie : les nouveaux horizons* (Eurasia New Horizons), run by Mr Thierry Mariani, a member of the French delegation to PACE. Another example cited was ESISC, which the report alleged was Mr Mariani's client organisation. In July 2010 *Eurasie : les nouveaux horizons* had become a co-founder of the EAEO run by Mr Goris and Mr Destexhe. The EAEO had been particularly active in conducting fake election observation missions in Azerbaijan and it had had former PACE MPs, such as Mr Iwiński, as observers. In addition, the Freedom Files report referred to the "Society for the Promotion of German-Azerbaijani Relations" (GEFDAB), a lobbying agency set up in Germany by Mr Lintner, who had been active in election observation in Azerbaijan.

D. Other relevant reports

1. The OCCRP reporting project

48. In a summary to its research findings, the OCCRP reporting project suggested that PACE had been a target of lobbying practices involving the payment of large sums of money by the Azerbaijani authorities to various institutions and individuals in order to secure support for the actions of the ruling regime. According to the report, over 16,000 financial transactions had been made through four shell companies registered in the United Kingdom.⁶¹ At the same time, the Estonian branch of Danske Bank handled the accounts of all four Azerbaijani "Laundromat" companies, allowing billions of dollars to pass through it without investigating their propriety. The report also submitted that it was not clear where the money had come from and where it was destined for. However, it suggested that the source of the money had been linked to the family of the Azerbaijani President, Mr Ilham Aliyev. Also, the available records showed that the money had ended up in the accounts of companies and individuals across the world and in Azerbaijan.

49. The report revealed that the beneficiaries of the money transfers related to PACE included Mr Lintner, who was the person behind the GEFDAB organisation and who had observed several elections in Azerbaijan and provided a positive assessment on them. According to the revelations in the report, Mr Lintner had received a total of EUR 819,500 in nineteen instalments between 2012 and 2014. The OCCRP also reported on the money transfers made to Mr Volontè, a matter on which ESI had reported in great detail. In addition, the revelations included the case of a former member of the Slovenian delegation to PACE, Mr Zmago Jelinčič Plemeniti, who had received EUR 25,000 in July 2012 from one of the UK companies involved in the alleged "Laundromat". Mr Jelinčič Plemeniti had acted as an observer in three Azerbaijani elections: in 2005, 2010 and 2013, on which he had given a positive assessment.

⁶¹ Polux Management LP, Hilux Services LP, Metastar Invest LLP, and LCM Alliance LLP.

2. Other media reports

50. In September 2017 several media outlets in Belgium⁶² reported on the involvement of Mr Destexhe and Mr Goris in the setting up and running of the EAEO, which had conducted a number of election observation missions in Azerbaijan. Contrary to the international criticism of those elections, the EAEO had provided a positive assessment. Moreover, it had been financed from Azerbaijani funds through an organisation in Germany run by Mr Lintner. According to the media reports, the EAEO had been established in 2010 in Belgium by Mr Destexhe and Mr Goris, who also served as EAEO administrators. According to a document available to the media, on 16 July 2015 Mr Destexhe's term in office in the EAEO was extended for a further period of five years. However, another document of June 2017 provided a rectification of the July 2015 document, indicating that Mr Destexhe's function in the EAEO had not been extended in July 2015. At the same time, the media reports referred to the fact that the EAEO had held a registered seat at Mr Destexhe's address until September 2016 and that he had signed the 2014 financial declaration for the EAEO in December 2015, all of which suggested that he had been linked to the EAEO even after July 2015.

51. Further reports by the Belgian media of September 2017⁶³ revealed that since July 2011 Mr Wille had held the position of an administrator in the "Office of Communication of Azerbaijan" (OCAZ), a lobbying organisation.

52. At about the same time, the German media reported on the links between Ms Karin Strenz, a member of the German delegation to PACE, and the Azerbaijani lobby. It was alleged that in 2014 and 2015 Ms Strenz had provided consultancy services to a company lobbying for the Azerbaijani authorities. The company in question was called Line-M. It had been set up by Mr Lintner, and, according to the media, the sole aim of its activity was to secure transfers of money from Azerbaijan to Germany for the purpose of the lobbying work there on behalf of the authorities in Baku.⁶⁴

⁶² See further <https://www.tijd.be/politiek-economie/belgie-algemeen/Belgische-politici-in-opspraak-door-geld-uit-Azerbeidzjan/9931278?ckc=1&ts=1513347805> (last accessed on 15 February 2018).
<http://www.lalibre.be/actu/belgique/asbl-belge-utilisee-pour-legitimer-les-elections-en-azerbaidjan-alain-destexhe-dement-toute-implication-59b76522cd703b65924881f6> (last accessed on 15 February 2018).
<http://www.lesoir.be/113645/article/2017-09-12/une-asbl-fondee-par-alain-destexhe-et-stef-goris-financee-par-lazerbaidjan> (last accessed on 15 February 2018).

<http://www.levif.be/actualite/belgique/alain-destexhe-vraie-fausse-demission/article-normal-721559.html> (last accessed on 15 February 2018).

https://www.rtf.be/info/belgique/detail_azerigate-alain-destexhe-convoque-par-le-mr?id=9706713 (last accessed on 15 February 2018).

http://www.sudinfo.be/1933797/article/2017-09-12/une-asbl-belge-financee-par-l-azerbaidjan-alain-destexhe-dement-toute-implicatio?utm_source=dlvr.it&utm_medium=twitter

(last accessed on 15 February 2018).

⁶³ See further <http://www.lalibre.be/actu/politique-belge/l-ex-senateur-open-vld-paul-wille-etait-aussi-lobbyiste-pour-l-azerbaidjan-59b9043dcd70fc627d7f4bea> (last accessed on 15 February 2018).

⁶⁴ See further <http://www.sueddeutsche.de/politik/bundestag-die-aserbaidhschan-connection-1.3671979> (last accessed on 15 February 2018).

<http://www.tagesspiegel.de/politik/lobbyarbeit-fuer-aserbaidhschan-druck-auf-cdu-politikerin-strenz-wegen-baku-connection/20351900.html> (last accessed on 15 February 2018).

http://www.deutschlandfunk.de/ungeklaerte-zahlungen-die-baku-connection-der-abgeordneten.1773.de.html?dram:article_id=396278 (last accessed on 15 February 2018).

<https://www.swr.de/swr2/bundestagsabgeordnetestrenz-zahlungen-aus-aserbaidhschan/-/id=7576/did=20309740/nid=7576/1ntmejr/index.html> (last accessed on 15 February 2018).

<https://www.svz.de/regionales/mecklenburg-vorpommern/strenz-auf-tauchstation-id17874991.html> (last accessed on 15 February 2018).

II. AZERBAIJAN AND THE PARLIAMENTARY ASSEMBLY

A. Azerbaijan's position within PACE

1. Introduction

53. Azerbaijan joined the Council of Europe on 25 January 2001 as the forty-third member State.

54. When Azerbaijan first submitted an application to join the organisation, the general spirit in PACE was already in favour of accepting its membership.⁶⁵ In June 2000, at the request of the Committee of Ministers, PACE adopted Opinion 222 (2000), finding that Azerbaijan was able and willing to fulfil the necessary requirements for becoming a COE member State, provided that it carried out a number of reforms, including in the field of free elections and the human rights and fundamental freedoms of "political prisoners".⁶⁶ That Opinion was followed in November 2000 by an invitation from the Committee of Ministers to Azerbaijan to become a member of the Council of Europe.⁶⁷

55. In the subsequent years of its membership of the COE, the issues of free elections and political prisoners became the two most contentious matters in Azerbaijan's membership record. In this connection, a number of activities within PACE were carried out with respect to Azerbaijan. The most relevant for the Investigation Body's assessment are set out and discussed in detail below.

56. In addition to the PACE activities, other COE bodies have dealt with the issues of democratic processes in Azerbaijan and political prisoners.⁶⁸ The most prominent bodies in this respect are the Venice Commission⁶⁹ and the European Court of Human Rights. The Court has on several occasions found violations of the European Convention on Human Rights and of Article 3 of Protocol No. 1 to the Convention concerning, respectively, detention and prosecution of opposition political activists in Azerbaijan,⁷⁰ and the failure of the Azerbaijani authorities to ensure free and fair electoral processes.⁷¹

<http://www.spiegel.de/politik/deutschland/cdu-csu-die-union-und-ihre-dubiosen-aserbaischan-verbindungen-a-1174884.html> (last accessed on 15 February 2018).

⁶⁵ Malcolm Bruce's oral evidence (8 November 2017).

⁶⁶ Opinion 222 (2000) Azerbaijan's application for membership of the Council of Europe, 28 June 2000 (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16816&lang=en>, last accessed on 15 February 2018).

⁶⁷ Resolution Res(2000)14 Invitation to Azerbaijan to become a member of the Council of Europe, 9 November 2000 (available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680536af4, last accessed on 15 February 2018).

⁶⁸ For a full list of COE activities concerning Azerbaijan see <https://www.coe.int/en/web/portal/azerbaijan> (last accessed on 15 February 2018).

⁶⁹ See a list of the Venice Commission's documents concerning Azerbaijan (available at http://www.venice.coe.int/webforms/documents/by_opinion.aspx?country=41, last accessed on 15 February 2018).

⁷⁰ See, for instance, *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, 22 May 2014; *Huseynli and Others v. Azerbaijan*, no. 67360/11 and others, 11 February 2016; *Rasul Jafarov v. Azerbaijan*, no. 69981/14, 17 March 2016; *Ilgar Mammadov v. Azerbaijan (no. 2)*, no. 919/15, 16 November 2017.

⁷¹ See, for instance, *Seyidzade v. Azerbaijan*, no. 37700/05, 3 December 2009; *Namat Aliyev v. Azerbaijan*, no. 18705/06, 8 April 2010; *Kerimova v. Azerbaijan*, no. 20799/06, 30 September 2010; *Karimov v. Azerbaijan*, no. 12535/06, 25 September 2014; *Gahramanli and Others v. Azerbaijan*, no. 36503/11, 8 October 2015; *Shukurov v. Azerbaijan*, no. 37614/11, 27 October 2016.

2. *The relevant PACE activities concerning Azerbaijan*

(a) The practical functioning of PACE in general

57. PACE is the deliberative organ of the Council of Europe dealing with matters falling within the scope of the COE's activities.⁷² These activities are, as defined by the Statute of the Council of Europe,⁷³ aimed at achieving greater unity between the COE member States for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress. In achieving this aim, PACE contributes to the discussion of questions of common concern and seeks agreements and common action on economic, social, cultural, scientific, legal and administrative matters and on the maintenance and further realisation of human rights and fundamental freedoms. In general, these activities can be viewed as discussions and action in the field of human rights, democracy and the rule of law.

58. In practical terms, in exercising its powers under the Statute, PACE may: (1) demand action from 47 European governments, which must reply; (2) conduct inquiries to uncover new facts about human rights violations; (3) question Presidents and Prime Ministers on any topic it chooses; (4) observe elections and send delegations to mediate in crisis hot-spots; (5) negotiate the terms on which States join the Council of Europe; (6) inspire new national laws by proposing and giving opinions on treaties; (7) request legal opinions on the laws and constitutions of member States; and (8) sanction a member State by recommending its exclusion or suspension. PACE also elects the Judges of the European Court of Human Rights, and the Commissioner for Human Rights, as well as the Secretary General and the Deputy Secretary General of the Council of Europe.

59. Following a debate and voting, PACE adopts three types of texts: (1) recommendations that are addressed to the Committee of Ministers; (2) resolutions by which it expresses its own viewpoint on a particular topic; and (3) opinions on membership applications, draft treaties or other issues referred to it.

60. PACE consists of representatives of each COE member State, elected by its parliament from among its members, or appointed from among members of that parliament. Each representative must be a national of the member State which he or she represents, but cannot at the same time be a member of the Committee of Ministers, which is a body that consists of the Ministers of Foreign Affairs or their permanent representatives. The term of office of the representatives in PACE starts from the opening of the ordinary PACE session following their appointment and normally expires at the opening of the next ordinary session, except that, in the event of elections to their parliaments having taken place, member States shall be entitled to make new appointments. No representative can be deprived of his or her position as such during a session of the Assembly without the agreement of the Assembly. Each representative may have a substitute who may, in the absence of the representative, sit, speak and vote in his or her place. The Statute of the Council of Europe sets out the number of representatives which each member State may have.⁷⁴ At present, there are 324 representatives from the parliaments of the Council of Europe's 47 member States. They meet four times a year for week-long plenary sessions in Strasbourg.

⁷² For further details on the functioning of PACE, see the PACE website <http://website-pace.net> (last accessed on 15 February 2018). See also Appendices III and IV to this report.

⁷³ Article 1 of the Statute of the Council of Europe, ETS No.001, 5 May 1949, with further amendments.

⁷⁴ See further, Chapter V of the Statute of the Council of Europe.

61. Matters relating to the internal organisation and procedures in PACE are regulated under its Rules of Procedure.⁷⁵ The following are the main entities of PACE:

- the President⁷⁶ – represents the Assembly, chairs its important debates and acts as its spokesperson;
- the Vice-Presidents⁷⁷ – twenty Vice-Presidents chair the Assembly whenever the President is unavailable;
- 47 national delegations;
- political groups: (1) the Group of the European People’s Party (EPP/CD); (2) the Socialists, Democrats and Greens Group (SOC); (3) the European Conservatives Group (EC); (4) the Alliance of Liberals and Democrats for Europe (ALDE); (5) the Group of the Unified European Left (UEL); (6) the Free Democrats Group (FDG);
- the Bureau of the Assembly – an entity consisting of 38 MPs, made up of the President, Vice-Presidents, the Chairpersons of the political groups or their representatives as well as the Chairpersons of the general PACE Committees. In addition, the larger countries have a permanent seat in the Bureau; the smaller countries take turns. The key duties of the Bureau are: preparation of the Assembly’s agenda, referral of documents to committees, arrangement of day-to-day business, relations with other international bodies;
- the Presidential Committee – consists of the President of PACE and Chairpersons of the six political groups who, according to the witnesses heard by the Investigation Body, have a significant power of patronage. The Presidential Committee is a consultative body for the Bureau and the President. It prepares meetings of the Bureau and carries out some liaison tasks. Several witnesses explained that the Presidential Committee was a very important body of PACE, particularly since it controlled the flow of information and the setting of the agenda;
- the Standing Committee – consists of the Bureau and the Chairpersons of national delegations. It is convened twice a year in the member States which hold the rotating chairmanship of the Council of Europe. The Standing Committee acts on behalf of PACE when it is not in session;
- the Joint Committee – a forum set up to co-ordinate the relations between the Committee of Ministers and PACE. It is composed of a representative of each member Government and a corresponding number of representatives of PACE;
- the secretariat – 90 staff members based in Strasbourg assist members of PACE to carry out their work. The head of the secretariat is the Secretary General, whose task is to ensure the proper functioning of PACE and the fulfilment of its mandate.⁷⁸

⁷⁵ For the relevant provisions of the PACE Rules of Procedure, see Appendix VI to this report.

⁷⁶ The current president of PACE is Mr Michele Nicoletti (Italy).

⁷⁷ The current Vice-Presidents of PACE are: Mr Werner Amon (Austria); Mr Volodymyr Ariev (Ukraine); Włodzimierz Bernacki (Poland); L’uboš Blaha (Slovak Republic); Ms Rósa Björk Brynjólfssdóttir (Iceland); Mr Titus Corlătean (Romania); Sir Roger Gale (UK); Mr Jonas Gunnarsson (Sweden); Mr Alfred Heer (Switzerland); Mr Akif Çagatay Kiliç (Turkey); Ms Stella Kyriakides (Cyprus); Ms Ana Catarina Mendes (Portugal); Ms Marianne Mikko (Estonia); Mr Andreas Nick (Germany); Mr Joe O’Reilly (Ireland); Ms Marija Obradovic (Serbia); Mr Samad Seyidov (Azerbaijan); Ms Nicole Trisse (France). Two seats are vacant (Italy and Russian Federation).

⁷⁸ The current Secretary General of PACE is Mr Wojciech Sawicki.

62. In addition to those entities, the work of PACE is organised through specialised committees. Currently there are nine such committees:

- Political Affairs and Democracy – scrutinises political matters and deals with urgent political situations and crises in the COE member States;
- Legal Affairs and Human Rights – works on activities related to the promotion of the rule of law and defence of human rights;
- Social Affairs, Health and Sustainable Development – deals with issues of social rights and policies, public health, sustainable development, economic cooperation and development, local and regional democracy, and good governance;
- Migration, Refugees and Displaced Persons – considers all relevant matters relating to migration, asylum and displacement, in Europe and in other relevant parts of the world;
- Culture, Science, Education and Media – considers issues related to culture, science, education, youth, sport and media in Europe;
- Equality and Non-Discrimination – works on the promotion of equal opportunities across the board and works to counter discrimination;
- Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) – responsible for verifying the fulfilment of obligations assumed by member States under the terms of the COE Statute, the ECHR and other COE Conventions to which they are parties, as well as the honouring of commitments entered into by the authorities of member States upon accession to the COE;
- Rules of Procedure, Immunities and Institutional Affairs (Rules Committee) – ensures that the Assembly's Rules of Procedure are applied properly and monitors the need for their amendment;
- Election of Judges to the European Court of Human Rights – interviews candidates for the position of a judge in the ECtHR, scrutinises their CVs and makes recommendations to the Assembly plenary concerning the qualifications of these candidates.

63. Committees are composed of representatives or substitutes of PACE. In general, there are also alternates of the same nationality in the committees who have the same rights as members of a committee, although they may not be elected chairperson of that committee. Other members of the same nationality may replace absent members of the committee. Nominations to committees are proposed by national delegations and ratified by PACE. In this context, the Monitoring Committee, the Rules Committee and the Committee on the Election of Judges to the European Court of Human Rights are an exception.

64. The members of the Monitoring Committee are appointed by the six political groups. The Committee also includes *ex officio*: the Chairperson of the Committee on Political Affairs and Democracy; the Chairperson of the Committee on Legal Affairs and Human Rights; the Chairpersons of the six political groups, and the outgoing President of PACE. According to a senior member of the PACE secretariat, the fact that the members of the Monitoring Committee were appointed by the political groups usually contributed to the fact that reports prepared in the Monitoring Committee were adopted in the PACE plenary.

65. As in the Monitoring Committee, the members of the Rules Committee are appointed by the six political groups, and two are non-registered. Its *ex officio* members are the chairpersons of the five political groups and the outgoing President of PACE. The members of the Committee on the Election of Judges to the European Court of Human Rights are appointed by the five political groups

and also include *ex officio* the Chairperson of the Committee on Legal Affairs and Human Rights and the Chairperson of the Committee on Equality and Non-Discrimination.

66. At the beginning of each session (January of each year) the committees are reconstituted and elect their chairperson and three vice-chairpersons. The chairperson may be re-elected once. In general, a committee can work when one third of its members are present. In addition to the full members, there are also alternates, who are allowed to attend the meetings but only members are allowed to speak and vote. However, if a member is absent, the alternate may participate in the discussion and the vote. If members and alternates are unable to attend, the relevant delegation may appoint any other MP, as an ad hoc member, to speak and vote in their place.

67. Discussions in the committees are held in camera, but every committee is free to admit to its meeting anybody it wishes. As a rule, all MPs may attend and observe the work of the committees, save in some exceptional cases, such as those concerning the election of Judges to the ECtHR and the work of the Monitoring Committee.

68. Voting in the committees is carried out by a show of hands of those present at the meeting. This can sometimes lead to a difficulty in the counting of votes, given that different persons other than committee members may be present in the meeting room during the committee discussions. Voting in committees is confidential. The holding of meetings in camera and the confidentiality of the voting process was seen by some of the PACE secretariat members heard by the Investigation Body as a working method that needed to be changed in order to achieve better transparency in PACE's political processes.

69. The main task of the committees is to debate and produce reports for the consideration of the PACE plenary. The Investigation Body was informed that, when adopting a particular text, the following procedure is normally followed. First, a motion on a particular topic is tabled by a group of PACE MPs. The motion is then filtered by the Bureau and sent to the relevant committee. There is then a call for rapporteurs in the committee. If there are several candidates, a vote is taken, sometimes by a secret ballot if a candidate so requests. The rapporteur then makes a declaration of the absence of any conflict of interest. This can be contested by other members. However, that happens very rarely and has never happened in the case of Azerbaijan.⁷⁹ Once appointed, the rapporteur – usually after visits or hearings – prepares a report which is first discussed by the committee. Following the debate in the committee, the Assembly plenary debates the report and the resolution on which the report is made and may amend the draft text or texts in the draft resolution before voting to adopt or reject them. Upon the adoption of the report, the rapporteur and the relevant committee are mandated for the next twelve months to ensure the follow-up of the measures proposed. Many committees also appoint general rapporteurs to cover a particular field or topic.

70. In addition to the above general procedures, some special arrangements are envisaged for the work of the Monitoring Committee. The procedure before that Committee may take one of the following forms:

- Full monitoring procedure – regular visits by a pair of rapporteurs, who conduct an ongoing dialogue with the national authorities, and occasional plenary debates to ensure that a State's progress and problems are assessed. This currently applies to ten States (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, the Russian Federation, Serbia, Turkey and Ukraine);

⁷⁹ Wojciech Sawicki's oral evidence (5 September 2017).

- Post-monitoring dialogue – applied to States that have made progress and are thus subject to a less intensive procedure involving a limited number of remaining issues. This currently applies to three States (Bulgaria, Montenegro and “the former Yugoslav Republic of Macedonia”);
- Periodic reviews – concerning all other member States whose compliance with the COE commitments is assessed every five to six years. This currently applies to 34 of the Council’s 47 member States;
- Specific report on the Functioning of Democratic Institutions – a report on the functioning of democratic institutions in any member State when particular developments so warrant.

71. A senior member of the PACE secretariat explained that the Monitoring Committee produced different types of reports. Full reports entailed at least one or two visits a year and a report every three years. Full reports were normally adopted following a procedure according to which after a first visit, a preliminary draft report was drawn up and sent to the national delegation within three months, after which a revised version was then drafted. A second visit could be organised before adoption of the final report. There were also so-called “periodic review reports” covering all other member States, which did not fall under the monitoring procedure. Unlike all the other committees, the work of the Monitoring Committee was country specific. There were no thematic reports.

72. The witness went on to explain that a further particularity of the Monitoring Committee was that its mandate was permanent. Every other committee was tasked with drawing up a report upon the signing of a motion and has two years to produce a report on any given subject. With regard to the appointment of rapporteurs, the witness explained that for every country under monitoring or post-monitoring dialogue, there were two rapporteurs. They should come from different political groups. They could not come from a neighbouring country or from a country with special interests. The meaning of “special interests” had never been precisely defined, but it meant, for instance, that an Italian rapporteur should not work on an Albanian file. The choice of rapporteur should also respect gender and regional balance. In 2006 or 2007 it had been decided that the Monitoring Committee could also appoint as rapporteurs members who were from a country which was itself under monitoring.

73. The witness further explained that the secretariat played an important role in the work of the Monitoring Committee.⁸⁰ It was the secretariat that organised the fact-finding visits and arranged the programme of the visits. The secretariat was also responsible for the drafting of the reports, the rapporteurs not being involved in the preparation of the initial draft of the report.

74. The report was then used for the preparation of the draft resolution. That was the document to be adopted by the PACE plenary. The draft resolution was first adopted in the committee itself, following an oral discussion. It was examined paragraph by paragraph and every member could propose amendments. Such amendments were normally discussed in advance with the national delegation.

75. Thereafter the report and the draft resolution would be tabled with the PACE plenary. Amendments, which required five signatures, had to be formally tabled with the Table Office in writing twenty-four hours before the debate. This meant that every amendment could be drafted on

⁸⁰ The important role of the secretariat in the work of the Monitoring Committee was also stressed by some MPs (Jordi Xuclà’s oral evidence (12 December 2017); Axel Fischer’s oral evidence (22 January 2018)). For instance, Mr Fischer considered that given their involvement in the country under monitoring, which allowed for, amongst other, friendships to develop, the administrative staff should also rotate just like the rapporteurs.

a sheet of paper. It required only five signatures. The Table Office then produced a compendium indicating the place in the text where the amendment had been proposed. The deadlines were very short and the secretariat was usually not left with sufficient time to coordinate further work concerning the amendments. In the PACE plenary a vote could be taken on every amendment.

(b) Overview of the PACE activities concerning Azerbaijan

76. As already noted, the most important PACE activities concerning Azerbaijan relate to the issues of political prisoners and election observation. These two activities will be addressed in detail below. A full list of the relevant reports and activities concerning Azerbaijan is presented in Appendix V to the report.⁸¹ A list of the relevant persons involved in these activities is the following.

(i) Monitoring Committee

77. The following served as co-rapporteurs on Azerbaijan in the Monitoring Committee:

- 7 March 2001 - 20 June 2004: Mr Gross and Mr Martinez Casañ;
- 22 June 2004 - 29 June 2006: Mr Gross and Mr Andres Herkel;
- 29 June 2006 - 6 November 2007: Mr Herkel and Mr Tony Lloyd;
- 6 November 2007 - 18 November 2009: Mr Herkel and Ms Evguenia Jivkova (Bulgaria);
- 18 November 2009 - 24 June 2010: Mr Herkel and Mr Debono Grech;
- 24 June 2010 - 29 January 2015: Mr Debono Grech and Mr Agramunt;
- 29 January 2015 - 25 June 2015: Mr Agramunt and Mr Iwiński;
- 25 June 2015 - 9 December 2015: Mr Iwinski and Mr Conde;
- 9 December 2015 - 19 April 2016: Mr Conde and Mr Schennach;
- 19 April 2016: Mr Scennach and Mr Preda.

(ii) Committee on Legal Affairs and Human Rights

78. The most important aspect of the work of the Committee on Legal Affairs and Human Rights concerning Azerbaijan related to the specific issue of political prisoners, which, as already noted above, will be separately addressed in this report. The most recent report produced within the Committee on Legal Affairs and Human Rights, adopted in October 2017, although dealing with the matter of political prisoners, also addressed the general situation of respect for human rights in the country.

79. The rapporteurs on the issue of political prisoners were the following (in chronological order): Mr Clerfayt, Lord Malcolm Bruce (UK), Mr Strässer and Mr Destexhe.

(iii) Committee on Political Affairs and Democracy

80. The rapporteurs in the Committee on Political Affairs and Democracy on the matters concerning Azerbaijan were Mr David Atkinson (UK) and Mr Walter.

(iv) Committee on Social Affairs, Health and Sustainable Development

81. The rapporteur in the Committee on Social Affairs, Health and Sustainable Development on a matter concerning Azerbaijan was Ms Milica Marković (Bosnia and Herzegovina).

⁸¹ Information provided by the PACE secretariat at the Investigation Body's request.

(v) PACE election observation missions in Azerbaijan

82. A number of PACE MPs have participated in the election observation missions in Azerbaijan, which will be separately addressed in this report (see paragraph 301 below).

3. Exertion of influence on political processes in PACE concerning Azerbaijan

(a) Introductory observations

(i) General context

83. A number of witnesses heard by the Investigation Body expressed views on the different ways in which influence had been exerted on various political processes within PACE concerning Azerbaijan. A majority of the witnesses heard had the impression that over time,⁸² since Azerbaijan had joined the COE, the attitude towards that country in PACE had changed in the sense that the criticism had softened. It was stressed in particular that it had become very difficult to have critical reports on the situation in the country adopted by the PACE bodies, whether in the election observation missions, in different committees or in the PACE plenary.

84. Some witnesses, such as Mr Seyidov⁸³ and Mr Iwiński,⁸⁴ considered that this change in attitude towards Azerbaijan was simply the result of good diplomacy. Witnesses also raised geopolitical arguments when explaining the particular activities in PACE in favour of Azerbaijan. Some witnesses expressed the view that there had been unjustified pressure applied to Azerbaijan within PACE.⁸⁵ According to these views, Azerbaijan was a new democracy and a country that needed support from the COE in meeting democratic standards.⁸⁶ That was an argument of Realpolitik.⁸⁷ For others, however, such justifications were simply advanced as an excuse to cover up corruption, there being in their view no reason to treat Azerbaijan differently from any other country, albeit that it might have been more important than its neighbours because it had oil and gas.⁸⁸ In any event, Mr Sawicki considered that the geopolitical argument was misplaced when discussing and voting on issues related to human rights.⁸⁹

85. Many witnesses remarked that when matters concerning Azerbaijan were discussed in PACE, the activities seemed to be orchestrated as there were always many more people present, including those who were otherwise rarely seen in the Assembly, who cast their votes in favour of

⁸² Witnesses were generally unable to identify a particular moment when this change in attitude happened. According to some members of the PACE secretariat, this change in attitude had become more visible after Mr Volonté had been appointed chairman of the EPP.

⁸³ Samad Seyidov's oral evidence (22 January 2018).

⁸⁴ Tadeusz Iwiński's oral evidence (13 October 2017).

⁸⁵ For instance, Mr Destexhe considered that there was an international campaign against Azerbaijan which did not exist in respect of other much more repressive regimes such as Iran, Uzbekistan and Turkmenistan (Alain Destexhe's oral evidence (6 November 2017)).

⁸⁶ Paul Wille's oral evidence (11 October 2017); Joseph Debono Grech's oral evidence (13 October 2017); Jordi Xuclà's oral evidence (12 December 2017); Samad Seyidov's oral evidence (22 January 2018); Stef Goris' oral evidence (23 January 2018).

⁸⁷ Andres Herkel's oral evidence (23 October 2017). Moreover, in this context, for instance, Mr Walter mentioned that the British Petroleum (BP) was the largest foreign investor in Azerbaijan and that there were quite strong links between the United Kingdom and Azerbaijan (Robert Walter's oral evidence (7 November 2017)). Lord Bruce stated that the UK's point of view had been to support Azerbaijan's accession to COE given the interest that the BP had as an operator in Azerbaijan (Malcolm Bruce's oral evidence (8 November 2017)).

⁸⁸ Arif Mammadov's oral evidence (10 October 2017).

⁸⁹ Wojciech Sawicki's oral evidence (5 September 2017).

Azerbaijan.⁹⁰ Concerns and suspicions were therefore raised in the minds of many as to the real reasons behind the apparent change of attitude towards Azerbaijan. The publication of the NGO reports (see paragraphs 6-27 and 41-47 above) also significantly contributed to such concerns.

86. Some of the forms of exertion of influence which the witnesses observed were the result of normal parliamentary political support of Azerbaijan's interests. However, some appear to have been the result of influence exerted by extra-institutional actors (lobbyists) working within PACE in favour of Azerbaijan. Many witnesses heard by the Investigation Body also had the impression that gifts and different forms of benefits, in some instances even money, had played a role in the decision-making processes concerning Azerbaijan.

87. The Investigation Body heard direct evidence of gifts being received. However, the only documented evidence of money changing hands came from the documents disclosed in the Italian criminal case against Mr Volontè. Given its lack of full investigative powers,⁹¹ the Investigation Body was unable to obtain any other documented evidence of corruption. It nevertheless heard serious allegations of what appeared to be corruptive activities and its attention was drawn to facts which appeared to support those allegations.

88. The allegations made and the facts supporting them are examined under four principal headings: (1) the various activities in favour of Azerbaijan within PACE; (2) the exchange of gifts and different forms of benefits; (3) the influence of extra-institutional actors (lobbyists); and (4) money and other corruptive activities being used as a means of fostering Azerbaijan's interests in PACE.

89. The Investigation Body has addressed in separate chapters below issues related to the work of the election observation missions (see paragraphs 289-478), the circumstances of the Volontè case (see paragraphs 280-288) and the circumstances surrounding the Strässer affair (see paragraphs 225-279).

(ii) Reactions and wider context within the COE related to the alleged exertion of influence by Azerbaijan

90. The Investigation Body heard evidence from Mr Arif Mammadov⁹² that he had tried, both in his capacity as Ambassador and after leaving office, to raise awareness on all the issues happening around Azerbaijan with Mr Jagland and the then Head of his Private Office, Mr Björn Berge, but that there had been no reaction to the allegations he had made.⁹³ According to Mr Mammadov, he also spoke to Mr Álvaro Gil-Robles, the then Commissioner for Human Rights. However, Mr Mammadov never contacted Mr Sawicki.

91. Mr Mammadov explained in particular that he had tried to press the COE to do more concerning Azerbaijan. Mr Mammadov had mostly made contact with Mr Berge, whom he had told about the persecution of opposition leaders and about lobbying. However, after he had become a dissident, he had asked on several occasions for a meeting with the Secretary General and others, but had never received one.

⁹⁰ The Investigation Body has heard evidence that this also concerned some other countries. For instance, Mr Alex Fischer stated that the largest turnout in PACE was when matters were discussed in respect of Azerbaijan, Armenia and Ukraine.

⁹¹ See, for instance, Articles 22-23 of the COE Criminal Law Convention on Corruption, ETS No. 173, of 27 January 1999; and the powers of OLAF, "Guidelines on Investigation Procedures for OLAF Staff", 1 October 2013.

⁹² Arif Mammadov's oral evidence (10 October 2017).

⁹³ Mr Mammadov raised this issue also with the Norwegian media (<http://www.newsinenglish.no/2017/10/20/angry-jagland-angers-others/>, last accessed on 15 February 2018).

92. In connection with the statement of Mr Mammadov, the Investigation Body heard Mr Berge,⁹⁴ who confirmed that he knew Mr Mammadov. He explained that Mr Mammadov had asked for a meeting with Mr Jagland, probably in 2010. What he had said in that meeting was astonishing because he had criticised the internal developments within his own country. Mr Berge had later become a friend of Mr Mammadov and his wife. However, Mr Berge and Mr Jagland had started to wonder whether the Azerbaijani leadership had been aware of Mr Mammadov's criticism, as they assumed that he had been doing the same in other parts of the organisation. When Mr Berge asked Mr Mammadov about this, the latter told him that he had been under some kind of protection from the Foreign Minister and that he had some sort of special relationship with President Aliyev, whom he had known in the past. Mr Berge also explained that Mr Mammadov had remained ambassador until 2012 and had then returned to Baku, where he had become the head of the Council of Europe section in the Ministry of Foreign Affairs. Mr Berge and Mr Jagland had met him again in that capacity on a few occasions.

93. With regard to the corruption allegations, Mr Berge submitted that Mr Mammadov had not insisted that the Secretary General should act in one way or the other. The allegations had been part of the overall picture. Mr Mammadov had never criticised the Secretary General but had seen him as a person he could talk to. However, after the first meeting in 2010, Mr Jagland had become more sceptical and had started to think that Mr Mammadov might be a provocateur. For his part, Mr Berge had thought that Mr Mammadov had been acting in good faith. Mr Berge also explained that after Mr Mammadov had become a political opponent and fled Azerbaijan because a criminal investigation had been opened against him for criticising the authorities, it had been more difficult to have meetings with him, as this might have been seen as a provocation.

94. In addition to the matters noted above, Mr Mammadov stated that the local staff working in the COE office in Baku was on the payroll of the Presidential Administration. The Investigation Body heard direct evidence to the same effect with regard to two local staff members of the COE office in Baku.

95. Furthermore, in connection with the work of the COE office in Baku, a PACE secretariat member gave oral evidence to the Investigation Body explaining that in 2005 she had had lunch with several of her colleagues and Mr Gross. On that occasion Mr Gross had said that he knew from a very certain source that the then head of the office in Baku, a Council of Europe staff member, had received a EUR 100,000 bribe from the Azerbaijani authorities. However, there had been no reaction to this in the COE, as nobody had taken this allegation seriously.

(b) Activities in favour of Azerbaijan within PACE

96. The majority of concerns with regard to the PACE work on Azerbaijan related to the choice of rapporteurs, the relationship between the local authorities and the rapporteurs, and the conduct of the rapporteurs following visits to the country. Concerns were also raised over unusually full meeting rooms in PACE when matters on Azerbaijan were discussed.

97. A number of witnesses heard by the Investigation Body suggested that some PACE MPs had some sort of conflict of interest with regard to Azerbaijan but that the mechanism for removal of a rapporteur did not function properly. There was an impression that those in favour of Azerbaijan, across the spectre of political affiliation, were appointed to key functions. In this connection, Mr Sawicki stated that the appointments to different positions in PACE were the most important

⁹⁴ Björn Berge's oral evidence (7 November 2017).

matter. He explained that national delegations made proposals for appointments. Moreover, some appointments were the result of a political compromise between the political groups. In the case of Azerbaijan, these appointments were always very delicate matters. The fact was also that it was never certain who would get a particular position when it came to Azerbaijan. This particularly concerned the Monitoring Committee.⁹⁵

98. The Investigation Body also heard witnesses suggesting that the PACE secretariat members acted in a manner that implied lobbying for a particular political cause or in favour of a specific outcome of a political process. In this context, Mr Destexhe considered that the COE staff were not behaving neutrally, because those coming from NGOs were mainly activists. He submitted that NGOs were not transparent about their financing and had a political agenda.⁹⁶

99. In view of the above, the Investigation Body will set out the evidence obtained with regard to the functioning of the Monitoring Committee first, and then with regard to other committees and activities concerning Azerbaijan.

(i) Activities in the Monitoring Committee

100. A senior member of the PACE secretariat stressed that the Monitoring Committee reports on Azerbaijan had never excluded any fact that should be mentioned concerning the country. There were, however, suspicions that efforts were being made by the authorities to influence the work of the rapporteurs. It was unusual that all rapporteurs, save for Mr Gross and Mr Herkel, had always been very eager to travel to Azerbaijan for missions, which for the witness was difficult to explain.

101. As already noted above, Mr Gross and Mr Herkel were among the early rapporteurs on Azerbaijan. Mr Herkel also worked with Mr Lloyd, with whom, according to him, he had enjoyed excellent cooperation. As for Ms Jivkova, Mr Herkel stressed that she had been much less experienced but he had always had good relations with her. Mr Herkel had not felt that she had been strongly manipulated although, in his view, she had probably been approached by the Azerbaijanis. With Mr Debono Grech he had had a very short experience, namely a few trips together but not many exchanges of views.⁹⁷

102. Mr Debono Grech's appointment as rapporteur was generally seen as a contentious issue and an example of Azerbaijani influence in PACE. Ms Christoffersen explained that she had been the first candidate rapporteur for the post. However, a group supporting Azerbaijan, headed by Mr Hancock, had managed to delay her election to the post. Eventually, although she had been supported by her political group (SOC), which should normally have sufficed for her appointment as co-rapporteur, there had been an unusually large mobilisation of persons in the committee who had then supported the unexpected candidature of Mr Debono Grech, electing him as a co-rapporteur.⁹⁸ Eventually, in his work as co-rapporteur, Mr Debono Grech had simply followed Mr Agramunt, his fellow co-rapporteur, and had never raised any questions.⁹⁹

103. During his questioning before the Investigation Body, Mr Debono Grech stated that he had simply applied for the post and won it.¹⁰⁰ The Investigation Body has obtained the letter by which Mr Debono Grech put forward his candidature for the post of rapporteur on Azerbaijan. In the letter,

⁹⁵ Wojciech Sawicki's oral evidence (5 September 2017).

⁹⁶ Alain Destexhe's oral evidence (6 November 2017).

⁹⁷ Andres Herkel's oral evidence (23 October 2017).

⁹⁸ Lisa Christoffersen's oral evidence (10 October 2017).

⁹⁹ Oral evidence of a senior member of the PACE secretariat.

¹⁰⁰ Joseph Debono Grech's oral evidence (13 October 2017).

he stressed that he would not be able to attend the meeting at which the appointment would be discussed due to his other commitments in the national parliament. Mr Herkel also recalled the circumstances concerning Mr Debono Grech's appointment as rapporteur. He pointed out that the fact that Ms Christoffersen had been the first candidate for the post should not be seen as crucial although, in his view, she had been more qualified for the post. Mr Herkel stressed that he had in fact taken the post of rapporteur from Mr Agramunt in 2004 by obtaining the majority of votes in the Monitoring Committee, although Mr Agramunt had been the official candidate of the EPP.¹⁰¹

104. A witness from the PACE secretariat who had worked with Mr Agramunt and Mr Debono Grech explained that Mr Agramunt had never been prepared for missions, which had caused difficulties in working with him. However, he had not intervened to any great extent in the final report presented to the Assembly in January 2013, particularly after the secretariat had informed him that the tone of the report could not be softened. Moreover, some comments that he had provided on the report had been drafted in such good English that it was clear that Mr Agramunt himself had not drafted them. In the witness's view, they could have been drafted by his assistant. However, she had also known some cases where MPs would send a text to their national ministries of foreign affairs for corrections. On the other hand, Ms Yunus considered that the report by Mr Agramunt and Mr Debono Grech was a sham. During a press conference in Baku she had even accused them of having been bribed by the authorities. However, she acknowledged during her hearing before the Investigation Body that she had no evidence for such an assertion.¹⁰²

105. According to further witnesses heard by the Investigation Body, there were two particularly controversial co-rapporteurs in the Monitoring Committee on Azerbaijan: Mr Agramunt and Mr Iwiński. Both became rapporteurs in what Ms Christoffersen considered to be very strange circumstances. In particular, she explained that when Mr Herkel's term as a co-rapporteur on Azerbaijan had expired, Ms de Pourbaix-Lundin had been supposed to replace him as a candidate of the EPP. Then suddenly that person had been appointed co-rapporteur on Ukraine and Mr Agramunt had taken her place as co-rapporteur on Azerbaijan. With regard to Mr Iwiński, it had been surprising that he had been so eager to become a co-rapporteur on Azerbaijan in his last year in PACE.¹⁰³

106. The Investigation Body heard evidence from a member of the PACE secretariat who worked in the Monitoring Committee with the co-rapporteurs Mr Agramunt and Mr Iwiński.¹⁰⁴ According to the witness, they had attended meetings with President Aliyev, and the president of his office in the absence of the secretariat, which was, according to the witness, unusual. They would ask the secretariat to leave the room.

107. The witness further explained that Mr Agramunt and Mr Iwiński had also visited prisoners in Azerbaijan but had never had anything to say to them, which was something that only happened in Azerbaijan. Moreover, the two rapporteurs had very openly been on good terms with the Azerbaijani authorities. The witness also stated that in the context of a visit to Azerbaijan, Mr Agramunt had gone two days before the official delegation.

108. With regard to the drafting of the report, the witness explained that Mr Agramunt had redrafted the entire report, which was not usual in the Monitoring Committee's work (see

¹⁰¹ Andres Herkel's oral evidence (23 October 2017).

¹⁰² Leyla Yunus' oral evidence (6 November 2017).

¹⁰³ Lise Christoffersen's oral evidence (10 October 2017).

¹⁰⁴ These two co-rapporteurs produced the report Doc. 13801 (05/06/2015): The functioning of democratic institutions in Azerbaijan; Res. 2062 (2015) adopted on 23/06/2015.

paragraph 73 above). In particular, Mr Agramunt had sent an email to the witness containing a document with his comments on the report. The changes to the report requested by Mr Agramunt had been incorporated in an official version of the draft report and the secretariat had then circulated that revised version of the draft report to other MPs. Mr Seyidov had then complained that it was unacceptable that they had not changed a certain paragraph in the report. However, in the text circulated to the MPs that paragraph had in fact been changed following Mr Agramunt's request. This led the witness to believe that Mr Seyidov had already seen the initial draft report (which was confidential) that had been sent to Mr Agramunt.¹⁰⁵

109. The same witness further explained that following the appointment of Mr Agramunt as PACE President, his position as co-rapporteur had been taken by Mr Conde. He was a member of the Spanish delegation, which was seen as a supporter of Azerbaijan in PACE. Mr Conde had never visited Azerbaijan as a co-rapporteur in the context of the monitoring process concerning that country. At the same time, he had refused to see any of the NGOs and had been supporting the Azerbaijani authorities.¹⁰⁶

110. The witness further explained that afterwards, Mr Schennach had replaced Mr Iwiński as co-rapporteur (see paragraph 77 above). The witness had the impression that Mr Schennach had wanted to do his work properly but had been very much impressed with the position and the fact that he was meeting high-level political figures. Soon thereafter, Mr Preda had been appointed co-rapporteur instead of Mr Conde. Mr Preda had been very supportive of the Azerbaijani authorities and had been very open in this respect. Once, when he had visited political prisoners, he had had a dispute with Mr Ilgar Mammadov because the latter had accused him of being corrupt and as having a conflict of interest (because there was allegedly a statue of Heydar Aliyev in Bucharest). After that dispute, Mr Mammadov had sent a letter to the PACE President, Mr Agramunt, asking for the removal of Mr Preda as rapporteur. However, nothing had happened.

111. The witness further stated that Mr Preda had chosen to visit Azerbaijan at the time when a Formula 1 race had been taking place there. On that occasion, according to the information which the witness had received from the hotel where they had stayed, Mr Preda's hotel room had been paid for in cash by a man. Later, a representative of the Romanian authorities had explained to the witness that Mr Preda's hotel had been paid for by the Romanian Ambassador. For the witness, these were very strange events for a monitoring mission to a country.¹⁰⁷ The witness further said that at one meeting Mr Preda had stated that he had visited Azerbaijan with his family during the European games in 2016 and that, on one mission, Mr Preda had taken his son with him to Azerbaijan. It was claimed also that when in Azerbaijan Mr Preda would move around in a black car, accompanied by a man, in the absence of the secretariat even though members of the secretariat usually travelled with the rapporteur when on mission.¹⁰⁸ Ms Dragana Filipović, the former head of the COE office in Baku, also stated that she had been told by the ambassadors of several countries in Baku that Mr Preda had some oil-related business in Azerbaijan.¹⁰⁹

¹⁰⁵ The Investigation Body has been provided several documents, copies of email exchanges, confirming the statement of the witness.

¹⁰⁶ In the context of Mr Conde's work, see further paragraph 172 below.

¹⁰⁷ Mr Sawicki explained that the costs of fact-finding missions to a country by the rapporteurs were paid by PACE (oral evidence 5 September 2017).

¹⁰⁸ The Investigation Body obtained evidence from the PACE secretariat that the conduct of Mr Preda changed in the course of a recent visit to Azerbaijan.

¹⁰⁹ Dragana Filipović's oral evidence (23 January 2018).

112. Mr Schennach, when heard by the Investigation Body,¹¹⁰ explained that as a co-rapporteur in the Monitoring Committee he had been personally and professionally very interested and active, and often very successful, in providing help and obtaining the release of political prisoners in Azerbaijan. He was also very interested in the work of NGOs and he had regularly consulted people such as Mr Arif and Ms Leyla Yunus on the situation in the country.¹¹¹ Mr Schennach also explained that in his work as co-rapporteur, Mr Preda had not been very active and he had usually left it to Mr Schennach to organise the visits, to attend the meetings in the country and to prepare the reports. Mr Schennach did not know what Mr Preda had been doing when he was not attending the official meetings. He explained, however, that sometimes Mr Preda had wanted to intervene in the reports in order to soften the tone and sometimes he had simply accepted the report.

(ii) Activities in the Committee on Legal Affairs and Human Rights

113. The main concerns with regard to the work of the Committee on Legal Affairs and Human Rights concerned the circumstances surrounding the Strässer report on political prisoners in Azerbaijan. This will be the subject of a separate examination (see paragraphs 225-288 below). Concerns were also expressed with regard to the work in the Committee on Legal Affairs and Human Rights on the process of preparation and adoption of the report entitled “Azerbaijan’s Chairmanship of the Council of Europe: what follow-up on respect for human rights?”, which was prepared by the rapporteur Mr Destexhe.¹¹²

114. That report was seen as a follow-up to the Strässer report on political prisoners since, according to a witness from the PACE secretariat, the Bureau did not want to have a separate report on the matter. Mr Michael McNamara (Ireland) explained during his hearing before the Investigation Body¹¹³ that he was behind the motion for the adoption of that report and resolution.¹¹⁴ His motion had first been rejected in the Bureau and the Bureau’s decisions were usually simply read out in the Assembly and accepted. However, McNamara had challenged that decision and, as nobody had expected that and thus had not organised a vote, his motion had eventually been adopted in the Assembly. The motion had then been sent to the Legal Affairs Committee.

115. The Investigation Body heard evidence from a member of the PACE secretariat who worked on the preparation and adoption of the report in question. The witness explained that the first rapporteur on the report had been Mr Agramunt and that, when he had become President of PACE, Mr Destexhe had become rapporteur. Mr Destexhe was also Chair of the Committee on Legal Affairs and Human Rights. In this context, the witness stated that there had been a lot of pressure to appoint the rapporteur for that report as soon as possible. When the decision was adopted on the appointment of the rapporteur, a number of MPs had been present in the Committee who were never usually there, and they had supported the proposal to have Mr Agramunt appointed as rapporteur.¹¹⁵ Mr Agramunt’s argument for the nomination was that he had already worked on the

¹¹⁰ Stefan Schennach’s oral evidence (24 January 2018).

¹¹¹ Ms Yunus, when heard by the Investigation Body, acknowledged that she had worked with Mr Schennach on the issue of political prisoners and that he had send her the draft resolution on the functioning of democratic institutions in Azerbaijan which she had commented.

¹¹² Resolution 2185 (2017) of 11 October 2017 (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24196&lang=en>, last accessed on 15 February 2018).

¹¹³ Michael McNamara’s oral evidence (11 October 2017).

¹¹⁴ See Motion for a resolution (Doc. 13484), 8 April 2014 (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20722&lang=en>, last accessed on 15 February 2018).

¹¹⁵ The evidence to the same effect was given by Mr McNamara.

issue of Azerbaijan in the Monitoring Committee. The documentary evidence available to the Investigation Body shows that the appointment of Mr Agramunt as rapporteur took place on 25 June 2014 following a vote in the Committee by secret ballot, which he won by a solid majority.

116. In connection with the work of Mr Agramunt as rapporteur, the witness explained that in summer 2014 a number of political dissidents had been arrested in Azerbaijan. The secretariat had therefore prepared a statement for Mr Agramunt condemning the arrests. At first, Mr Agramunt had said that he would look at it but then he had failed to reply to efforts made by the secretariat to contact him. The statement had eventually been made not by Mr Agramunt but by the rapporteur on human rights defenders. Moreover, as there had been an idea to have the report on the Committee agenda in September 2014, a note had been prepared for Mr Agramunt on the situation in Azerbaijan. However, only in October 2014 had Mr Agramunt sent his comments on the draft note back to the secretariat. They contained a number of changes to the effect that Azerbaijan was a new democracy. The new note had been less critical. According to the witness, it was notable that Mr Agramunt had delayed his visit to the country and eventually had never travelled there for the purpose of his report.

117. The witness further explained that in January 2016 Mr Destexhe had become Chair of the Committee on Legal Affairs and Human Rights. It had been very difficult to work with him. He had not trusted the secretariat and had always made the fixing of the agenda more difficult. With regard to the report on Azerbaijan, Mr Destexhe had at first delayed the appointment and, shortly before the meeting of the Committee in Paris in March 2016, he had informed the secretariat that he had changed the agenda: he would add the appointment of the rapporteur on Azerbaijan and he would be the candidate. There being no other candidate, Mr Destexhe had been appointed rapporteur.¹¹⁶ The documentary evidence available to the Investigation Body shows that Mr Destexhe argued at the Committee meeting of 7 March 2016 that it was necessary to appoint a rapporteur urgently and that he had discussed the matter with the PACE President. When appointed rapporteur, Mr Destexhe made a declaration of the absence of any conflict of interest.

118. According to the witness, following Mr Destexhe's appointment as rapporteur, the relevant NGOs had wanted to see him but he had refused and instead had asked his assistant to meet them. This had been very unusual as the rapporteur should meet NGOs. Eventually, he had met NGOs in May 2016. He had not known the subject very well during the meeting and had even been somewhat aggressive towards the NGOs.

119. The witness further explained how Mr Destexhe had managed to obtain authorisation from the Committee to go to Azerbaijan for a fact-finding mission and to prolong the time period of his mandate. The mission to Azerbaijan had taken place in February 2017. The witness and the secretariat members had met President Aliyev, the head of the Presidential Administration, the Minister of Justice, the Prosecutor General and the Supreme Court judges. There had been a discussion on the execution of the ECtHR's judgment concerning Mr Ilgar Mammadov. Before the meeting, Mr Destexhe had been provided by the secretariat with a list of names and specific questions on political prisoners. He had given a copy to the Minister of Justice and had asked to see Mr Ilgar Mammadov and some others. He had not followed the secretariat's advice on whom to visit. The meeting with Mr Mammadov and two others had indeed taken place.

¹¹⁶ Eventually, amid the public controversy over his relationship with Azerbaijan, in September 2017 Mr Destexhe resigned from all his functions in PACE before his report was presented in the PACE plenary.

120. For the witness, there were two surprising elements of Mr Destexhe's mission to Azerbaijan. First, Mr Destexhe had asked the secretariat to leave the room when he had met President Aliyev. He had also been alone when meeting the head of the Presidential Administration. The reason which Mr Destexhe had given was that he wanted to speak to the head of the Presidential Administration alone about the case of a political prisoner (a certain Aliyev). With regard to the meeting with President Aliyev, the witness stated that Mr Destexhe had said that he wanted to discuss the case of Mr Ilgar Mammadov.

121. The second unusual issue was that Mr Destexhe had asked the secretariat members accompanying him to hand over to him the handwritten notes concerning the visit. Later, Mr Destexhe had prepared a note on the basis of the handwritten notes and had given it to the secretariat. That document had not been critical towards Azerbaijan. It had been drafted in bad French, containing mistakes which a native speaker would not make, which suggested that perhaps the document had not been drafted by Mr Destexhe. The witness pointed out that it was very unusual that the rapporteur would himself prepare a note on a visit.

122. The witness stated that on the basis of the note, the secretariat had prepared a report. Mr Destexhe had intervened in the report, changing some parts so as to make it less critical. For instance, he had changed the description of an event concerning the suicide of a prisoner so as not to present it as a suicide. He had also, at a very late stage in the process, changed some parts of the final resolution concerning comments on the amendments to the Azerbaijani Constitution and he had praised the authorities for securing religious tolerance, in particular in relation to the Jewish community. He had also added a paragraph on the authorities' efforts in combating poverty, which had nothing to do with the scope of the report. Moreover, he had added a sentence inviting NGOs to a constructive dialogue and a sentence implying that only the Monitoring Committee, and not the Committee on Legal Affairs and Human Rights, should be dealing with the issues of human rights in Azerbaijan. Mr Destexhe had also included something on the Armenian occupation of the Nagorno-Karabakh region. Eventually, however, on the issues of human rights, the secretariat had added some text and this had remained in the final report. On this occasion, Mr Destexhe had not intervened so much in the text.

123. Even the final text of Mr Destexhe's report was adopted as a resolution following a number of amendments made in the context of the PACE plenary debate making the tone of the resolution much more critical of Azerbaijan.¹¹⁷ Some still consider this resolution as a sham criticism. Mr Arif Mammadov pointed out that, in his view, despite the clear evidence of the existence of political prisoners in Azerbaijan, the report still implied that those were not cases of real political prisoners. He also considered that the demands of the report towards the Azerbaijani authorities in this respect were too weak.¹¹⁸

124. For his part, Mr Destexhe explained that following the mission to Azerbaijan, a report had initially been prepared by the secretariat on the basis of his instructions. According to Mr Destexhe, although reports on Azerbaijan drafted by the secretariat were generally biased, he thought that this one was fair. His instructions had been to have a balanced report which gave the floor to all the people he had met (authorities, NGOs). The report had strongly addressed all the shortcomings: freedom of expression, freedom of assembly, non-respect for the judgments of the ECtHR, together

¹¹⁷ See further <http://assembly.coe.int/nw/xml/Votes/DB-VotesResults-EN.asp?VoteID=36840&DocID=16395&MemberID=7122> (last accessed on 15 February 2018).

¹¹⁸ Arif Mammadov's oral evidence (10 October 2017).

with the explanations given by Azerbaijan. In his view, the resolution had been drafted in even stronger terms.¹¹⁹

(iii) Activities in other committees

125. In the Committee on Political Affairs and Democracy, a controversy arose over the report on the “Escalation of violence in Nagorno-Karabakh and the other occupied territories of Azerbaijan” by Mr Walter as the rapporteur. This report was the result of two motions made in June 2014. A motion on the armed occupation of Azerbaijani territories by Armenia (Doc. 13546) was tabled by Mr Suleymanov and others on 24 June, and another motion on the Nagorno-Karabakh conflict (Doc. 13549) was tabled by Ms Theodora Bakoyannis (Greece), chairperson of the Committee on Political Affairs and Democracy, and others on 25 June 2014. In September 2014 they were joined to be examined in a single report.¹²⁰ On 1 October 2014 Mr Walter was appointed rapporteur following a vote by secret ballot. When appointed rapporteur, he made a declaration of the absence of any conflict of interest.¹²¹

126. A member of the PACE secretariat heard by the Investigation Body explained that there had already been a dispute over the title to be given to the report. Eventually, Mr Agramunt had played a very important role in ensuring that the report was given the title in question. A further issue had arisen over the appointment of the rapporteur. The candidates had been Mr Walter and Mr Jean-Claude Mignon (France). They had both made statements about the absence of any conflict of interest. The witness did not recall who had put forward Mr Walter’s name but it had been clear from the very beginning that he had the support of Azerbaijan and of the chairperson of the committee at that time, Ms Bakoyannis.

127. The witness further explained that there had been forceful attacks against Mr Walter by the Armenians. Mr Walter had stated that his intention was to draft a report simply informing his colleagues on the developments of the efforts to resolve the conflict in Nagorno-Karabakh. In this respect, he had immediately announced that he intended to meet the Minsk Group, visit Yerevan, meet the IDPs, and visit Baku and the region.

128. According to the witness, Mr Walter travelled to Baku in March 2015 and was granted all the meetings he wanted. There had been nothing suspicious in Mr Walter’s behaviour. On the other hand, he had been unable to get any agreement from the Armenian authorities to make the necessary visits (see paragraphs 246 and 483 below). The Armenian delegation had started accusing him of making anti-Armenian statements. Moreover, Mr Walter’s impartiality had been put into question because it was said that his wife was Turkish and that she had been doing business in Azerbaijan. Mr Walter had laughed at that allegation, saying that the fact that his wife was making dinner for him in the evening was not enough to constitute a conflict of interest.

129. The witness also explained that in the summer of 2015 Mr Walter had lost his seat and he knew that November 2015 would be his last chance to present his report on Nagorno-Karabakh. He had first managed to negotiate a visit to Nagorno-Karabakh for August 2015. However, shortly before the mission, the Armenian delegation had changed their mind and proposed a visit in

¹¹⁹ Alain Destexhe’s oral evidence (6 November 2017).

¹²⁰ See further the explanatory memorandum to the Report “Escalation of violence in Nagorno-Karabakh and the other occupied territories of Azerbaijan” (Doc. 13930), 11 December 2015, available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22255&lang=en> (last accessed on 15 February 2018).

¹²¹ Documentary evidence provided by the PACE secretariat upon the request of the Investigation Body.

November, knowing that November was too late for Mr Walter. So Mr Walter had decided to go a second time to Baku and had visited the areas around the line of contact in Nagorno-Karabakh.

130. Eventually, according to the witness, Mr Walter prepared a draft resolution contradicting the principles of international law and the basic principles that had already been agreed by the Minsk Group. At that moment the witness had become suspicious about his conduct. Nevertheless, Mr Walter's report had been adopted in the Committee and sent to the PACE plenary in January 2016 where it had been rejected by a narrow majority.¹²²

131. The witness also pointed out that, in the meantime, Mr Walter had acquired Turkish nationality himself,¹²³ so for the witness it had been quite obvious that he had a conflict of interest. For his part, Mr Walter accepted that he had taken Turkish nationality and that his wife was Turkish. He also stated that his outlook on Azerbaijan as a Turkic country was slightly different from that of other members of PACE. However, he argued that when it came to some points, such as the issue of Azerbaijan's human rights record, he was unable to defend them.¹²⁴

132. Further controversy arose over the report adopted within the Committee on Social Affairs, Health and Sustainable Development entitled "Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water", prepared by the rapporteur Ms Marković.¹²⁵ The report was adopted by the PACE plenary in January 2016.¹²⁶

133. In November 2016 an anonymous letter was received in the Parliament of Bosnia and Herzegovina, stating that Armenia suspected that Ms Marković had received a bribe from Azerbaijan while preparing the report. This letter later became public. The news implied that the Ambassador of Bosnia and Herzegovina to the COE, Mr Predrag Grgić, had been approached by the Armenians about allegations of corruption against Ms Marković. Articles also reported that Mr Mladen Bosić (PACE MP) had asked the ambassador to prepare a briefing on that report, with an analysis on how the votes had been cast, by party and by country. This was meant to be an internal briefing to gather information, but the information was subsequently released to the press. Ms Marković later said she would launch a court case against Mr Bosić and the ambassador for defamation.¹²⁷

134. For her part, Ms Marković denied having any specific information on any alleged corruption. She argued that she had been seriously obstructed in different ways by the Armenian delegation in PACE during her work on the report. On the other hand, she had had good cooperation on the

¹²² See further for the voting results <http://assembly.coe.int/nw/xml/Votes/DB-VotesResults-EN.asp?VoteID=35783&DocID=15681&MemberID=> (last accessed on 15 February 2018).

¹²³ According to the publicly available information, Mr Walter was given Turkish citizenship in May 2015 (see <https://www.dailysabah.com/turkey/2015/05/25/former-british-mp-robert-walter-given-turkish-citizenship>, last accessed on 15 February 2018).

¹²⁴ Mr Robert Walter's oral evidence (7 November 2017).

¹²⁵ Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=22429&lang=en> (last accessed on 15 February 2018).

¹²⁶ See further <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5992&lang=2&cat=> (last accessed on 15 February 2018).

¹²⁷ The different media reports are available at <https://www.blic.rs/vesti/republika-srpska/ambasador-bih-u-savetu-evrpe-o-slucaju-nagorno-karabah-bosic-me-stavio-u-neugodan/xzbjeh8> (last accessed on 15 February 2018). <https://www.blic.rs/vesti/republika-srpska/slucaj-nagorno-karabah-markoviceva-tuzi-bosica-i-grgica/xpw5tey> (last accessed on 15 February 2018). <https://www.blic.rs/vesti/republika-srpska/parlamentarka-bih-u-sredistu-diplomatskog-rata-jermenije-i-azerbejdzana/gmkpgzg> (last accessed on 15 February 2018).

Azerbaijani side. However, Ms Marković stressed that all her activities on the report had been planned and carried out in cooperation with the PACE secretariat.¹²⁸

(iv) Other PACE activities

135. In addition to the above evidence, several witnesses from the PACE secretariat raised an issue about private meetings having been held between the rapporteurs and the Azerbaijani authorities. For instance, according to a witness, one such meeting had been held between Mr Agramunt and President Aliyev. Another private meeting had allegedly been held between the head of the Presidential Administration and Mr Preda and Mr Schennach.

136. In this connection, the Investigation Body heard evidence from different witnesses that this was something that had also happened in respect of other countries. For instance, Ms Anne Brasseur (Luxembourg), former President of PACE, explained that the PACE secretariat was usually, but not always, present when the MPs would have discussions with national officials. She had met the President of the Duma alone.¹²⁹

137. A senior member of the PACE secretariat stated that she had been excluded from meetings of MPs with the authorities in Monaco, Russia and Azerbaijan. In Azerbaijan, when a meeting with President Aliyev had finished and the PACE delegation had been about to leave, the President had kept the rapporteurs alone for a brief talk. Another member of the PACE secretariat stated that she had never been excluded from meetings in Azerbaijan but had been excluded from meetings in Russia. Ms Filipović also did not consider that it was unusual that rapporteurs had meetings in private with the authorities.¹³⁰

138. Furthermore, according to a senior official from the PACE secretariat, at one point there had been several “friends of Azerbaijan” in the PACE Presidential Committee: Mr Agramunt and Mr Axel Fischer (Germany, EPP), Mr Xuclà (ALDE), as well as the representative of the EC (Conservative). So out of seven members, it had seemed that four were favourable to Azerbaijan, which some people felt had created an impression of control of the Assembly and possible corruption. The same had been true for the Bureau and the chairs of the different committees. Moreover, with regard to the newly created political group called the Free Democrats Group, the witness stated that it was a group composed of many “friends of Azerbaijan” who could now act jointly in the Presidential Committee and the Bureau.

(c) Exchange of gifts and different forms of benefits

(i) Alleged existence of a special fund for gifts

139. Mr Arif Mammadov submitted in his oral evidence to the Investigation Body¹³¹ that as from 2007 Azerbaijan had started to organise many events, such as the conference on intercultural dialogue or the World Forum on Women’s Rights. In order to show legitimacy, the authorities had needed to have the participation of international organisations, including the COE. They had therefore invited members of PACE to Azerbaijan to participate in those events. For the MPs from PACE and other participants, everything had been paid, from five-star hotels to entertainment and

¹²⁸ Milica Marković’s written statement (16 December 2017).

¹²⁹ Anne Brasseur’s oral evidence (11 October 2017).

¹³⁰ Dragana Filipović’s oral evidence (23 January 2018).

¹³¹ Arif Mammadov’s oral evidence (10 October 2017).

gifts. Many MPs had therefore been happy to go to Baku and some of them had even asked for the hospitality to be extended to their friends and family.

140. According to Mr Mammadov, there had been a reserve for special expenses in the budget of the Permanent Representation. Those expenses had not been reported even to the financial inspection and were confidential. It had not been specified for what kind of lobbying the budget could be used. This budget had been controlled by the ambassador and he had needed to justify the expenses. There had been also a room full of gifts, such as small carpets, scarves, and other souvenirs of Azerbaijan. In his capacity as ambassador, Mr Mammadov had often taken carpets to meetings. Small carpets had been offered to lower-level visitors, and the carpets became larger depending on the position of the person concerned. In Baku, the aircraft were filled with gifts for those who had visited President Aliyev. Mr Seyidov, head of the Azerbaijani delegation to PACE, had also been distributing small gifts, such as tins of caviar.

(ii) Official declarations of gifts made in PACE

141. The evidence before the Investigation Body was that there were only six officially declared receipts of gifts by PACE MPs, namely:

- the receipt of a Hermès scarf by Ms Brasseur from the Speaker of the Russian State Duma on 13 November 2014; estimated value EUR 325; declaration made on 7 January 2015;
- the receipt of a Polet wristwatch by Mr Agramunt from the Speaker of the Federation Council, Federal Assembly of the Russian Federation, on 14 September 2016; estimated value around EUR 200; declaration made on 14 September 2016;
- the receipt of a bottle of Armenian liquor (left in the hotel), a scarf, a box of chocolates and a hand-made necklace (silver colour) by Ms Maury Pasquier (Switzerland) during the pre-electoral observation mission in Armenia between 22 and 23 February 2017; total estimated value about EUR 200 or slightly more; declaration made on 10 April 2017;
- the receipt of a painting by Mr Agramunt from the Speaker of the Russian State Duma on 26 March 2017; estimated value below EUR 200; declaration made on 23 April 2017;
- the receipt of two metal drinking goblets by Mr Agramunt from the Speaker of the Azerbaijani Parliament on 27 March 2017; estimated value below EUR 200; declaration made on 23 April 2017;
- the receipt of a silver coin by Mr Agramunt from the Speaker of the Council of Belarus on 27 March 2017; estimated value below EUR 200; declaration made on 23 April 2017.

142. According to a witness, other MPs had not declared any gifts, probably because they assumed that those gifts were worth less than EUR 200. Holiday trips and invitations to expensive restaurants had not been declared.

143. However, the Investigation Body also heard evidence from Mr Mariani, who stated that all the gifts he had received he had reported to his national parliament. He had considered it more important to declare gifts there than to the relevant services of PACE. This was because he had considered himself primarily bound by the rules of his national parliament.

(iii) Examples of gifts being received in PACE

144. A number of witnesses heard by the Investigation Body, both from the PACE secretariat and MPs, stated that they had received various gifts from the authorities of Azerbaijan and other countries. This was mostly considered to be an expression of courtesy and only a few examples given concerned gifts of a particular value. Witnesses from the PACE secretariat and MPs explained that it

was not always easy to refuse such gifts and that instances in which the offers had been declined had given rise to ill-feeling on the part of the authorities. There was in particular a cultural element in offering gifts in Azerbaijan and the Caucasus. At the same time, there were some MPs who considered that even the offer of a coffee was unacceptable and that it had to be declared.

145. For instance, a member of the PACE secretariat explained how, on one occasion, when Lord Russell-Johnston, former President of PACE, had travelled to the Caucasus region, Armenia, Georgia and Azerbaijan had rivalled each other in the level of hospitality. The official visit had ended in Baku where Mr Russell-Johnston (UK) had found his hotel suite literally full of gifts. Mr Russell-Johnston had asked the witness to diplomatically explain to the Azerbaijani delegation that he would be happy if they could bring only a quarter of them to Strasbourg. Such practices remained within the context of the Oriental tradition of hospitality.

146. Mr Sawicki explained that before Azerbaijan had joined the COE, he, as the then deputy Secretary General, and the then Secretary General of PACE would receive small boxes of caviar from Azerbaijan which they would share with their colleagues for a breakfast after PACE sessions. According to Mr Sawicki, it was very difficult to refuse such gifts.¹³² Mr Andrzej Drzemcewski, a retired senior official of the PACE secretariat, explained how a delegation in which he had participated had once received boxes of caviar from the Azerbaijani authorities. He had shared his caviar with his colleagues and had informed the Azerbaijani authorities about this. He also considered that it would have been inappropriate to refuse such a gift.¹³³ An official from the Venice Commission secretariat had had a similar experience. On one occasion in 2003 or 2004, he had been given 500 grams of caviar when on mission in Baku. According to the witness, the caviar had eventually become spoiled, so it had been thrown away.

147. An official from the PACE secretariat explained how she had seen some rapporteurs being offered carpets by the Azerbaijani authorities. However, she did not think that they were of any substantial value. She had also been offered a carpet, which she had politely refused. On that occasion, she had sent an email to the secretary of the Azerbaijani delegation explaining why she could not accept the gift and had forwarded the email to her superiors. On another occasion, during a visit to Azerbaijan, the same witness had been offered a pen. She had accepted it but had then realised that it might be worth some EUR 100, so she had reported the matter to her superiors. She had then been advised that there was no need to bother, so she had simply used the pen in the secretariat.

148. Another senior member of the PACE secretariat stated that in the course of a mission to Baku in 2014, she and Mr Debono Grech had been given large bags containing carpets. The witness had left her carpet in the hotel because she had not wanted to take it and in fact it had been too heavy and unattractive. The witness was sure that it had not been worth more than EUR 200. The same witness said that she had seen rapporteurs receiving courtesy gifts, such as a bottle of Armenian cognac or Moldovan or Georgian wine, or a pen. For his part, Mr Debono Grech confirmed having received a carpet as a gift.¹³⁴

149. Further information on the gifts given to MPs was provided by Mr Wille. He stated that he had received some courtesy gifts such as a book and a box of caviar.¹³⁵ Ms Brasseur also explained that it had not been possible to refuse the gift which she had received from the President of the

¹³² Wojciech Sawicki's oral evidence (5 September 2017).

¹³³ Andrzej Drzemcewski's oral evidence (11 October 2017).

¹³⁴ Joseph Debono Grech's oral evidence (13 October 2017).

¹³⁵ Paul Wille's oral evidence (11 October 2017).

Russian Duma (see paragraph 141 above). However, she had therefore immediately reported the receipt of the gift to the PACE secretariat.¹³⁶ Mr Seyidov stressed that recently, in the context of a PACE meeting in Copenhagen, he had found Lego toys and a bottle of wine in his room. He pointed out that such gifts could be interpreted in different ways.¹³⁷ Mr Iwiński submitted that the former Speaker of the Azerbaijani Parliament used to come to Strasbourg with small boxes of caviar and bottles of brandy.¹³⁸

150. Ms Doris Fiala (Switzerland) told the media¹³⁹ that she had received a gold chain with pearls and diamonds during an official working visit to Azerbaijan. She stated that she had returned it to the Azerbaijani delegation to PACE.¹⁴⁰ In the same media report, Mr Yves Cruchten (Luxemburg) also stated that when working on his report on the restriction of NGO activities in Europe¹⁴¹ he had been approached by Azerbaijani lobbyists, who explained that there was good caviar and girls in Azerbaijan. However, he did not suggest that any specific form of gift had been offered to him.

151. Some witnesses mentioned what appeared to have been the provision of the services of prostitutes. For instance, Mr Dick Marty (Switzerland) stated how on one occasion during an official mission to Baku, at around 1 a.m. somebody had knocked on the door of his hotel room. He had looked through the spyhole and seen a platter with a bottle of champagne and two young women barely dressed. He had not opened the door.¹⁴² The official from the Venice Commission secretariat also stated that on one occasion a woman had come to his hotel room and offered her services, which he had refused.

152. Mr Marty, during his hearing before the Investigation Body, also recalled having received an invitation to attend the Crans Montana Forum in Azerbaijan: a business-class ticket and one week in a five-star hotel. He had refused the invitation but he knew that such an invitation had also been addressed to other influential Swiss people.

153. In the same context and in view of the allegations made in the NGO reports, Mr Walter stressed that the European Azerbaijani Society (TEAS) had on a number of occasions invited him to events such as concerts or horse shows.¹⁴³ However, he had never accepted any of those invitations, nor had he been to any event that they had organised. Mr Walter also explained that TEAS provided some support to an organisation called the Conservative Friends of Azerbaijan, of which he was not a member.

¹³⁶ Anne Brasseur's oral evidence (11 October 2017).

¹³⁷ Samad Seyidov's oral evidence (22 January 2018).

¹³⁸ Tadeusz Iwiński's oral evidence (13 October 2017).

¹³⁹ See further <http://www.ardmediathek.de/tv/Europamagazin/Euoparat-Parlamentarier-im-Dienst-von-Das-Erste/Video?bcastId=342024&documentId=42509558> (last accessed on 15 February 2018).

¹⁴⁰ In her written statement to the Investigation Body, Ms Fiala stated that she had nothing to add to her media interview.

¹⁴¹ Report (Doc. 13940): How to prevent inappropriate restrictions on NGO activities in Europe?, 8 January 2016 (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22310&lang=en>, last accessed on 15 February 2018).

¹⁴² Dick Marty's oral evidence (13 October 2017).

¹⁴³ Another UK politician involved in the matters concerning Azerbaijan, Lord Bruce (see paragraphs 229-231 below), acknowledged that, after he had left PACE and in his capacity as a member of the UK Parliament, he had travelled to Azerbaijan with TEAS. Lord Bruce explained in his statement to the Investigation Body that this visit had been organised under the auspices of the Parliamentary all-party group on Azerbaijan. He had wanted to travel to Azerbaijan partly because he had not been there for a long time and had seen it as an opportunity to reconnect. He had learned that the visit had been substantially funded by TEAS, which he had not really researched (Malcolm Bruce's oral evidence (8 November 2017)). This visit had been officially declared in the UK Parliament (see Freedom Files report, p. 8).

154. With regard to a trade mission to Baku in which he had participated, Mr Walter stated that it was true that he had accompanied a British trade mission to Azerbaijan in September 2011. The mission had been organised by the Middle East Association (MEA) on behalf of UK Trade and Investment, a British governmental body. Mr Walter pointed out that his wife had been a senior executive of the MEA and as she was a native Turkish speaker, and Azerbaijan was a Turkic country, she had been the obvious choice in the organisation to lead the mission. At her request, Mr Walter had approached the head of the Azerbaijani delegation to PACE to see if he could facilitate some meetings with government departments in Baku. This he had done. However, the chairman had suggested that if Mr Walter were himself present, the delegates would have meetings at a more senior level. It had therefore been agreed with the director of the MEA that Mr Walter would accompany his wife as part of the delegation, with his expenses being fully met by the MEA.

155. Mr Walter further explained that there had been a meeting between the Minister of Defence in Baku and the representatives of British Aerospace (BAe) and Thales, which was a direct result of his presence. The mission had been fully supported by the British Embassy in Baku and was solely to promote British business in Azerbaijan. Mr Walter had understood that in addition to the delegates paying a fee to participate in the mission, the only outside sponsor was British Midland Airways (BMI), now part of British Airways, which had then operated a daily flight between London and Baku.¹⁴⁴

156. Mr Walter also categorically denied that TEAS had supported the visit, financially or otherwise. He submitted that before the mission there had been a briefing in which a representative of the Azerbaijan Embassy and a representative from TEAS had participated. However, Mr Walter had not attended that briefing. Moreover, Mr Walter did not believe that he had had any direct connection with SOCAR during the time that the trade mission was in Baku. SOCAR had only sponsored an energy conference which he had attended one morning.¹⁴⁵

(d) The influence of extra-institutional actors (lobbyists) on PACE activities concerning Azerbaijan

157. The Investigation Body has obtained evidence suggesting that there was a number of lobbying activities in PACE by external lobbyists in favour of Azerbaijan.¹⁴⁶ Such lobbying in particular concerned the use of various forms of persuasion directed at MPs to act in favour of that country.

158. Some of these activities involved less direct means of approaching MPs. An example of this is an attempt by Azerbaijani lobbyists in PACE to get Mr Platvoet to write a guide on Azerbaijan which would have been financed by the authorities.¹⁴⁷ Other lobbying was more direct and open. For instance, according to Mr Mariani, some ambassadors, notably from Azerbaijan and Armenia, who would contact MPs trying to lobby them.¹⁴⁸ According to media reports, a number of Czech politicians, including some PACE MPs (Mr Ondřej Benešik, Ms Soňa Marková and Mr Rom Kostřica) had also been actively lobbying for Azerbaijan.¹⁴⁹

¹⁴⁴ Robert Walter's written statement of 6 November 2017.

¹⁴⁵ Robert Walter's oral evidence (7 November 2017).

¹⁴⁶ Witnesses, both from the PACE secretariat and MPs, also stated that lobbying was very current practice in PACE in general. Some of them saw it as a necessary means of delivering the necessary information to the MPs.

¹⁴⁷ Leo Platvoet's oral evidence (13 October 2017).

¹⁴⁸ Thierry Mariani's oral evidence (22 January 2017).

¹⁴⁹ See further <http://praguemonitor.com/2017/09/18/mfd-czechs-implicated-azeri-money-laundering> (last accessed on 15 February 2018).

159. The Investigation Body has obtained evidence of organised lobbying activities, in which a number of former PACE MPs participated by attending the PACE plenary and other meetings as lobbyists in favour of Azerbaijan. This in particular concerns the following persons.

(i) *Mr Eduard Lintner*

160. Mr Lintner was a German MP in PACE (EPP) in the period between 1999 and 2010. He also served as chairman of the Committee on Legal Affairs and Human Rights and the Monitoring Committee.¹⁵⁰ According to the available information on the list of honorary members of PACE of October 2017,¹⁵¹ Mr Lintner has held the position of an honorary member since January 2010.

161. According to some witnesses from the PACE secretariat, even while he held office in PACE, Mr Lintner had always been very supportive of Azerbaijan. He had very often travelled to Azerbaijan, either as a PACE MP or independently of PACE. When the relevant services of the PACE Rules Committee had tried to obtain information from the German Parliament on Mr Lintner's visits to Azerbaijan, they had received an answer that MPs were free to travel wherever they wished. Mr Seyidov said that he considered that Mr Lintner was objective.¹⁵²

162. PACE MPs also saw Mr Lintner as a prominent member of a network supporting Azerbaijan.¹⁵³ He was, however, always very prudent in this respect.¹⁵⁴ For instance, he was one of those speaking in favour of the election of Mr Debono Grech as a co-rapporteur on Azerbaijan in the Monitoring Committee. This was, in turn, seen as a move on the part of the Azerbaijani lobby in PACE to appoint a favourable rapporteur to the post (see paragraphs 45-46 above). Mr Lintner also edited a book prepared by Mr Suleymanov on Azerbaijan's membership of the COE, which had been published in 2011.¹⁵⁵

163. Mr Lintner is the head of GEFDAB, which was reportedly established in 2009 while Mr Lintner still held office in PACE.¹⁵⁶ The organisation is well known for having observed the presidential election in Azerbaijan in 2013. In addition, Mr Lintner has a company called "Line M-Trade" registered in Germany,¹⁵⁷ which has made payments to Ms Strenz (see paragraphs 432-436 below).

164. According to the revelations on the payments made from Azerbaijan to various individuals and organisations in Europe, in the period between 2012 and 2014 Mr Lintner received EUR 819,500 from Azerbaijan, through the UK-based companies Polux Management, Metastar Invest, and Hilux Services. Mr Lintner has reportedly explained that the money came from the Association for Civil

¹⁵⁰ Further information on Mr Lintner's PACE membership file is available at <http://assembly.coe.int/nw/xml/AssemblyList/MP-Details-EN.asp?MemberID=4161> (last accessed on 15 February 2018).

¹⁵¹ The information provided by the PACE secretariat upon the request of the Investigation Body.

¹⁵² Mr Samad Seyidov's oral evidence (22 January 2018).

¹⁵³ Lisa Christoffersen's oral evidence (10 October 2017); Dick Marty's oral evidence (13 October 2017); Andres Herkel's oral evidence (23 October 2017).

¹⁵⁴ Andres Herkel's oral evidence (23 October 2017).

¹⁵⁵ See further <http://en.apa.az/azerbaijani-news/social-news/azerbaijan-10-years-member-of-the-council-of-europe-published.html> (last accessed on 15 February 2018).

¹⁵⁶ See further <http://www.spiegel.de/international/world/a-dictator-s-dream-azerbaijan-seeks-to-burnish-image-ahead-of-eurovision-a-806769.html> (last accessed on 15 February 2018).

¹⁵⁷ Information from the German Commercial Register reported by the *Süddeutsche Zeitung* (19 September 2017).

Society Development in Azerbaijan (ACSDA), a Baku-based NGO run by Mr Suleymanov, and that it had been used for the daily expenses of his organisation.¹⁵⁸

165. The Investigation Body itself obtained from the Italian criminal case file against Mr Volontè, bank statements showing that Mr Lintner received EUR 799,500 on his personal accounts from the following companies linked to Azerbaijan:¹⁵⁹ Hilux Services EUR 512,500 (twelve payments); Jetfield Networks EUR 41,000 (one payment); and Metastar Invest EUR 246,000 (six payments).

166. Mr Lintner was very often seen in the PACE building (*Palais de l'Europe*) after he had left office in PACE and was perceived as a lobbyist in favour of Azerbaijan.¹⁶⁰ According to witnesses from the PACE secretariat, he was very open about his activity and he even acknowledged to a member of the PACE secretariat that he worked as a lobbyist for Azerbaijan. Mr Seyidov, in his statement to the Investigation Body, stated that he used to meet Mr Lintner in PACE but he did not know whether Mr Lintner was a lobbyist.¹⁶¹

167. The information available to the Investigation Body on the entries of former PACE MPs to the PACE building shows that on fifteen occasions in 2015 Mr Lintner used his honorary badge of a former MP to enter the PACE building.¹⁶²

(ii) Mr Stef Goris

168. Mr Goris was a former Belgian MP in PACE in the period between 1999 and 2007.¹⁶³ According to the available information on the list of honorary members of PACE of October 2017, Mr Goris has held the position of an honorary member since October 2007.

169. According to a number of witnesses from the PACE secretariat, MPs and others heard by the Investigation Body, Mr Goris was a key or pivotal figure of the Azerbaijani system of lobbying in PACE.¹⁶⁴ Mr Seyidov stated that he had seen Mr Goris but could not say whether he had been lobbying as it was not a matter of concern for Mr Seyidov.¹⁶⁵

170. According to witnesses, Mr Goris was very often seen in the PACE building and elsewhere at PACE-related events when matters concerning Azerbaijan were being discussed. He was very often accompanied by his wife.¹⁶⁶ For instance, he visited Mr Agramunt in Madrid on the day when the creation of the Investigation Body was discussed.¹⁶⁷ He was also seen together with the whole

¹⁵⁸ See further the OCCRP reporting <https://www.occrp.org/en/azerbaijanilaundromat/profiles/eduard-lintner> (last accessed on 15 February 2018).

¹⁵⁹ See further <https://www.occrp.org/en/azerbaijanilaundromat/the-origin-of-the-money> (last accessed on 15 February 2018).

¹⁶⁰ Dick Marty's oral evidence (13 October 2017); Axel Fischer's oral evidence (22 January 2018); oral evidence given by the PACE secretariat.

¹⁶¹ Samad Seyidov's oral evidence (22 January 2018).

¹⁶² These entries occurred on the following dates: 27 January, 20 April and 28 September 2015.

¹⁶³ Further information on Mr Goris' PACE membership file is available at <http://www.assembly.coe.int/nw/xml/AssemblyList/MP-Details-EN.asp?MemberID=4283> (last accessed on 15 February 2018).

¹⁶⁴ Wojciech Sawicki's oral evidence (5 September 2017); Arif Mammadov's oral evidence (10 October 2017); Paul Wille's oral evidence (11 October 2017); Michael McNamara's oral evidence (11 October 2017); Dick Marty's oral evidence (13 October 2017); Robert Walter's oral evidence (7 November 2017).

¹⁶⁵ Samad Seyidov's oral evidence (22 January 2018).

¹⁶⁶ Arif Mammadov's oral evidence (10 October 2017).

¹⁶⁷ Wojciech Sawicki's oral evidence (5 September 2017). Mr Goris, in his oral evidence, explained that he knew Mr Agramunt and that he had a good relationship with him as they shared the same opinions and ideas. He accepted that there was a possibility that he met Mr Agramunt in Madrid.

Spanish delegation in the Sofitel Hotel in Strasbourg.¹⁶⁸ On another occasion, according to a member of the PACE secretariat, he had been seen by journalists of the *Süddeutsche Zeitung* in the evening together with Mr Agramunt, Mr Xuclà and Mr Fischer. For his part, Mr Fischer¹⁶⁹ could not remember that meeting and said that he only knew Mr Goris in relation to these activities in the Western European Union (“WEU”).¹⁷⁰ Mr Xuclà also stated that he would meet Mr Goris in the context of WEU activities and he used to see him in the PACE restaurant.¹⁷¹

171. According to the evidence of Mr McNamara, Mr Goris tried to lobby him in the PACE building in favour of Azerbaijan, and was very active in securing the defeat of the Strässer report on the issue of political prisoners in Azerbaijan (see paragraphs 257 and 272 below). The available information on the entries of former PACE MPs to the PACE building shows that in the period between 2015 and 2017 Mr Goris used his honorary badge of a former MP eighty-six times to enter the PACE building.¹⁷²

172. The Investigation Body also heard evidence that Mr Goris had been instrumental in the preparation of a statement issued by the co-rapporteurs on Azerbaijan, Mr Conde and Mr Iwiński, concerning the events of the contentious 2015 parliamentary elections in Azerbaijan. In particular, the secretariat had found in one of the committee meeting rooms, where Mr Iwiński had attended a meeting, a copy of an email sent by Mr Goris to Mr Iwiński containing a pre-prepared statement which Mr Iwiński and Mr Conde would send to the Bureau two days later. This suggested that the letter had been prepared by Mr Goris.¹⁷³ In addition, the revelations from the Italian criminal case file against Mr Volontè show that Mr Goris had an exchange over the confidential Strässer reports on the issue of political prisoners with Mr Muslum Mammadov and Mr Suleymanov and that his email was later forwarded by Mr Mammadov to Mr Volontè for his perusal. Moreover, the emails disclose that he worked for Mr Mammadov in preparing various other documents for him, notably a letter which Mr Agramunt was supposed to send in connection with his candidature for the EPP presidency in PACE (see paragraphs 279-280 below).

173. For his part, Mr Goris denied lobbying for Azerbaijan, stating that it was not clear to him what lobbying was. He explained to the Investigation Body that he used to come to the PACE building mainly for the purposes of attending meetings of the Assembly of the former Western European Union (ESDA). According to him, many PACE MPs were active in ESDA and would thus meet while PACE was in session. These included, for instance, Mr Agramunt with whom Mr Goris had a good relationship as they shared common views on some political matters. The meetings in PACE were simple social encounters where politics would come up as a topic. According to Mr Goris, he had no special interest in Azerbaijan although he lent moral support to the Government of Azerbaijan which had been fighting extremism and ensuring stability and safety in the region. In

¹⁶⁸ Anne Brasseur’s oral evidence (11 October 2017).

¹⁶⁹ Axel Fischer’s oral evidence (22 January 2018).

¹⁷⁰ The Western European Union was an international organisation and military alliance preceding the current forms of European political and security integration. It formally ceased to exist on 30 June 2011.

¹⁷¹ Jordi Xuclà’s oral evidence (12 December 2017).

¹⁷² These entries occurred on the following dates: 26 January, 20 April, 22-25 June and 28-29 September 2015; 25-28 January, 18-20 April, 20-21 June and 10-13 October 2016; 25 January and 25 April 2017.

¹⁷³ Wojciech Sawicki’s oral evidence (5 September 2017). The Investigation Body has been provided with a copy of this email. It contains a statement signed by Mr Conde and prepared on behalf of him and Mr Iwiński. This email was sent to Mr Iwiński from an email account starting with “stef.goris ...” on 25 September 2015. The same email address was used for Mr Goris’ communication with the Investigation Body via its official mailbox.

Mr Goris' view, Mr Soros, members of the PACE secretariat and some others were lobbying in PACE against Azerbaijan. Mr Goris also denied having received money from Azerbaijan.¹⁷⁴

174. In a written statement sent to the Investigation Body on 9 February 2018 complementing his oral evidence, Mr Goris argued that there were six key forms of lobbying in PACE: side events; recruiting signatures and/or votes;¹⁷⁵ influencing the secretary-author of the draft report;¹⁷⁶ lobbying in the press and social media; undue or unlawful lobbying;¹⁷⁷ and social contacts during a lunch. He claimed that he had not participated in any such activities.

175. In addition to the above-noted activities, Mr Goris was active in the election observation missions in Azerbaijan through an NGO established in Belgium called the European Academy for Elections Observation (EAEO).

176. The EAEO was created in September 2010 by Mr Goris and Mr Destexhe, former rapporteur on Azerbaijan in the Committee on Legal Affairs and Human Rights (see paragraphs 113-124 above). It was registered as an organisation specialising in election observation.¹⁷⁸ EAEO has actively worked on election observation in Azerbaijan, involving a number of active and former PACE MPs as observers, such as Mr Mariani and Mr Iwiński.¹⁷⁹ The activities of the EAEO in this respect are summarised below in the part concerning the issue of PACE election observation missions to that country (see paragraphs 375-377).

177. It was alleged that the EAEO was linked to *Eurasie : les nouveaux horizons* (France), the *Société pour la protection de l'État de droit/ Vereniging voor de Bescherming van de Rechtsstaat* (Belgium) and *Valores Democraticos* (Spain).¹⁸⁰ Mr Goris explained that the *Eurasie : les nouveaux horizons* was an organisation run by Mr Mariani, who had accepted to have his organisation as a preferential partner of the EAEO.¹⁸¹ Mr Mariani denied that there was any structural link between the two organisations. He explained that *Eurasie : les nouveaux horizons* no longer existed. He also stated that it had never had a bank account and had never received any funding.¹⁸² The *Société pour la protection de l'État de droit/ Vereniging voor de Bescherming van de Rechtsstaat* was an

¹⁷⁴ Stef Goris' oral evidence (23 January 2018).

¹⁷⁵ In this context, Mr Goris argued that Mr Omtzigt was one of the leading pro-Armenian and anti-Azerbaijani activist. He also provided a newspaper article on the Malaysian Airlines crash in Ukraine and Mr Omtzigt. However, the Investigation Body sees no link between this newspaper article and the matter referred to.

¹⁷⁶ In this respect, Mr Goris provided a photo allegedly taken in the PACE building on 24 January 2018 and depicting Azerbaijani human rights activists meeting a PACE secretariat member. For its part, the Investigation Body cannot confirm that the statement as to the identity of the persons is correct.

¹⁷⁷ In this connection, Mr Goris provided a copy of an email allegedly sent by Mr Strässer to his colleagues from the SPD in the German parliament in March 2011, stressing his support for a petition on Azerbaijan prepared by his colleague Ms Viola von Cramon. The nature and substance of the petition are not clear from the email itself. Mr Goris argued in his submission that the petition was "against the authorities of Azerbaijan". The Investigation Body cannot confirm this and thus cannot attribute a particular meaning to such incomplete information.

¹⁷⁸ Alain Destexhe's oral evidence (6 November 2017); Stef Goris' oral evidence (23 January 2018), including the documents on the functioning of the EAEO provided by Mr Goris at the hearing before the Investigation Body; online register of associations <https://www.companytracker.be/nl/biz/european-academy-elections-observation> (last accessed on 15 February 2018).

¹⁷⁹ Thierry Mariani's oral evidence (22 January 2018) and Tadeusz Iwiński's oral evidence (13 October 2017). Both of them observed for the EAEO the constitutional referendum in Azerbaijan held in September 2016. At that time, Mr Mariani was still a member of PACE; Mr Iwiński had left PACE in January of that year.

¹⁸⁰ See the analysis carried by the Freedom Files in its report (p. 86). The website of the EAEO is no longer active.

¹⁸¹ Stef Goris' oral evidence (23 January 2018).

¹⁸² Thierry Mariani's oral evidence (22 January 2018).

organisation created by Mr Goris and Mr Destexhe in Belgium¹⁸³ and *Valores Democraticos* was an organisation that had been established for the observation of elections in Spanish-speaking countries. According to Mr Goris, there had never really been any cooperation between the EAEO and *Valores Democraticos*.¹⁸⁴

178. According to the publicly available information, Mr Goris and Mr Destexhe were in charge of ensuring the functioning of the EAEO. In this respect, there is conflicting information on the exact dates of Mr Destexhe's involvement in the work of the EAEO. Thus, according to a document on the functioning of the EAEO, the role of Mr Destexhe as an administrator of the EAEO was extended in July 2015 for a period of five years. However, a rectification was made to that document in June 2017 according to which it had been Mr Goris and his wife who had been appointed administrators in 2015. At the same time, the seat of the EAEO remained at Mr Destexhe's address until September 2016, and he co-signed a financial statement on behalf of the EAEO in December 2015.¹⁸⁵

179. When heard by the Investigation Body, Mr Destexhe stated that he had never done anything for the EAEO in terms of elections observation. He had accepted to sit on the board in 2010 because Mr Goris was a friend and he had found the idea interesting. Moreover, he had never had any operational role in the EAEO and everything had been done by Mr Goris. Mr Destexhe denied having ever seen or asked to see any of the accounts of the EAEO. He had trusted Mr Goris on that.¹⁸⁶ For his part, Mr Goris submitted that the only thing that Mr Destexhe had done for the EAEO was to accept to be one of the co-founders. The EAEO had had a registered seat at Mr Destexhe's address but that was merely to have an address in Brussels. According to Mr Goris, he had later forgotten to delete Mr Destexhe's address from the EAEO website, and the inclusion of his address did not mean that Mr Destexhe had been involved in the functioning of the EAEO. The same was true, according to Mr Goris, for the submission of the financial statement. For that he had simply needed Mr Destexhe's signature, but the running of the EAEO was only done by him (Mr Goris).¹⁸⁷

180. The question of the financing of the EAEO remained unclear. According to the media reports, Mr Goris accepted that in the context of an election observation mission in Azerbaijan, the travel expenses and the costs of the hotel and restaurants had been paid for by the organisation of Mr Lintner (see paragraphs 163-164 above).¹⁸⁸ Mr Destexhe stated that he did not know where the money for the financing of the EAEO had come from. He did not know Mr Lintner, although he could not exclude that at some point they had been together at some meeting in Baku. Mr Destexhe also denied having ever seen or asked to see any of the accounts of the EAEO.¹⁸⁹

181. During his questioning by the Investigation Body, Mr Goris accepted that in one election observation mission the EAEO had worked together with Mr Lintner's organisation and on that occasion that organisation had paid for the EAEO's local costs. On the other hand, Mr Goris submitted an excerpt from an accounting report which he had commissioned concerning the financing of his organisation which, on the basis of the information made available, had not found

¹⁸³ See the online register of associations https://www.companytracker.be/nl/biz/vereniging-voor-de-bescherming-van-de-rechtsstaat#_blank (last accessed on 15 February 2018).

¹⁸⁴ Stef Goris' oral evidence (23 January 2018).

¹⁸⁵ Further information available at <http://www.levif.be/actualite/belgique/alain-destexhe-vraie-fausse-demission/article-normal-721559.html> (last accessed on 15 February 2018).

¹⁸⁶ Alain Destexhe's oral evidence (6 November 2017).

¹⁸⁷ Stef Goris' oral evidence (23 January 2018).

¹⁸⁸ The relevant media report available at <http://www.lesoir.be/113645/article/2017-09-12/une-asbl-fondee-par-alain-destexhe-et-stef-goris-financee-par-lazerbaidjan> (last accessed on 15 February 2018).

¹⁸⁹ Alain Destexhe's oral evidence (6 November 2017).

that the EAEO had received any money from Azerbaijan or the GEFDAB. Mr Goris did not wish to disclose any further details in this respect, stating that the financing of the EAEO was a sensitive political issue. He also stated that there was a criminal investigation pending in Belgium in respect of Mr Destexhe into the financing of the EAEO.¹⁹⁰

(iii) Mr Jaakko Laakso

182. Mr Laakso was a Finnish MP in PACE (UEL) in the periods between 1991 and 2003 (full member) and 2007 and 2011 (substitute member).¹⁹¹ According to the available information on the list of honorary members of PACE of October 2017, Mr Laakso has held the position of an honorary member since June 2013.

183. Witnesses from the PACE secretariat heard by the Investigation Body stated that Mr Laakso had been favourable to Azerbaijan while he had still been a member of PACE. According to both the PACE secretariat members and MPs, after he had left PACE, Mr Laakso had often been seen in the PACE building lobbying in favour of Azerbaijan.¹⁹²

184. Moreover, according to Ms Christoffersen, at the time when she was a candidate to be co-rapporteur on Azerbaijan in the Monitoring Committee (see paragraph 102 above), Mr Laakso called her and told her that he had received a telephone call from a former member of the Estonian military who said that she should not be elected as a rapporteur for Azerbaijan.¹⁹³

185. Mr Göran Lindblad, former MP in PACE and a lobbyist for Azerbaijan (see paragraphs 194-203 below), stated that on one occasion when they had both been lobbyists, he had met Mr Laakso for lunch. On that occasion Mr Laakso had acknowledged to Mr Lindblad that he had been on the Azerbaijani payroll.¹⁹⁴

186. The information obtained from the relevant COE services shows that Mr Laakso used his honorary member's badge seventy-nine times in the period between 2015 and 2016 to enter the PACE building.¹⁹⁵

(iv) Ms Karin S. Woldseth

187. Ms Woldseth was a Norwegian MP in PACE. In the period between 2005 and 2009 she was a substitute for Norway and thereafter until 2013 a full member for that country.¹⁹⁶ Ms Woldseth also served as chairperson of the Norwegian delegation to PACE. According to the available information on the list of honorary members of PACE of October 2017, Ms Woldseth has held the position of an honorary member since January 2014.

¹⁹⁰ Stef Goris' oral evidence (23 January 2018). See also https://www.rtb.be/info/belgique/detail_une-information-judiciaire-ouverte-a-l-encontre-d-alain-destexhe?id=9776192 (last accessed on 15 February 2018).

¹⁹¹ Further information on Mr Laakso's PACE membership file is available at <http://assembly.coe.int/nw/xml/AssemblyList/MP-Details-EN.asp?MemberID=2960> (last accessed on 15 February 2018).

¹⁹² Lisa Christoffersen's oral evidence (10 October 2017); Robert Walter's oral evidence (7 November 2017).

¹⁹³ Lisa Christoffersen's oral evidence (10 October 2017).

¹⁹⁴ Göran Lindblad's oral evidence (12 December 2017).

¹⁹⁵ These entries occurred on the following dates: 26-29 January, 20-22 April and 22-24 June 2015; 25-27 January and 18-20 April 2016.

¹⁹⁶ Further information on Ms Woldseth's PACE membership file is available at <http://www.assembly.coe.int/nw/xml/AssemblyList/MP-Details-EN.asp?MemberID=5638&CountryID=31> (last accessed on 15 February 2018).

188. Ms Woldseth was in general considered to be a member of a network of people who worked in PACE in favour of Azerbaijan. This network also included, for instance, Mr Laakso from Finland (see paragraphs 182-186 above).¹⁹⁷

189. The witnesses heard by the Investigation Body stated that Ms Woldseth was a lobbyist in PACE.¹⁹⁸ According to the witnesses, she worked not only in favour of Azerbaijan but also on other matters, including matters in favour of Armenia.¹⁹⁹ However, she kept her lobbying work very secretive.²⁰⁰ Mr Seyidov considered that Ms Woldseth was objective and positive towards Azerbaijan. He had sometimes met her in the PACE building but did not know whether she had been lobbying there.²⁰¹

190. The available information on the entries of the former PACE MPs to the PACE building show that in the period between 2015 and 2017 Ms Woldseth used her honorary badge ninety times to enter the PACE building.²⁰²

191. In her written statement to the Investigation Body,²⁰³ Ms Woldseth stressed that as a PACE MP she had never visited Azerbaijan and had no links to that country. With regard to her frequent visits to the Assembly, she stated that in 2014 she had attended the Assembly four times: once in order to receive a medal for her work; twice in order to lobby for the election of Mr Jagland as the Secretary General of the Council of Europe (for which she had been paid by the Norwegian Government), and once to meet some unidentified NGOs. According to Ms Woldseth's statement, she came to the PACE building twice in 2015 and twice in 2016. She then fell ill and did not return to the PACE building again until January 2017 "to close [her] business down and tell [her] clients so".

192. Ms Woldseth also submitted that she wanted to keep her assignments confidential as it was part of the agreement she had reached with the involved parties. However, she had disclosed her activity to those whom she met. She also argued that her work related to issues such as abuse of children, the provision of drugs to children, discrimination against old people, and the human rights situation in different countries.

193. Lastly, Ms Woldseth stressed that after having been "dragged into this investigation", she would never come to the PACE premises again.

(v) Mr Göran Lindblad

194. Mr Lindblad is a former Swedish MP in PACE who served in the period between 26 January 2004 and 22 January 2007 as a substitute and thereafter, until 12 November 2010, as a full member.²⁰⁴ According to the available information on the list of honorary members of PACE of October 2017, Mr Lindblad has held the position of an honorary member since January 2011.

¹⁹⁷ Robert Walter's oral evidence (7 November 2017).

¹⁹⁸ Lisa Christoffersen's oral evidence (10 October 2017); Ingjerd Schou's oral evidence (12 October 2017).

¹⁹⁹ The strange behaviour of Ms Woldseth as the head of a PACE election observation mission to the Armenian presidential election in 2013 was reported by a PACE secretariat member who worked on the file. The circumstances showed that she might have been influenced by the Armenian representatives to make her report less critical than the one initially prepared by the secretariat.

²⁰⁰ Ingjerd Schou's oral evidence (12 October 2017).

²⁰¹ Samad Seyidov's oral evidence (22 January 2018).

²⁰² These entries occurred on the following dates: 26-29 January, 20-22 April, 22-24 June and 28-29 September 2015; 25-26 January, 20-21 June and 10-11 October 2016; 24 January 2017.

²⁰³ Received on 10 January 2018.

²⁰⁴ Further information on Mr Lindblad's membership file in PACE is available at <http://assembly.coe.int/nw/xml/AssemblyList/MP-Details-EN.asp?MemberID=5264> (last accessed on 15 February 2018).

195. Mr Lindblad was mentioned by several witnesses as an open lobbyist for Azerbaijan in PACE.²⁰⁵ When heard by the Investigation Body, Mr Lindblad acknowledged that after his departure from PACE, he had worked as a lobbyist for the European Azerbaijan Society (TEAS). He also provided the relevant documents attesting to the conditions of his recruitment as a lobbyist.²⁰⁶

196. The Investigation Body notes that according to official publicly available information,²⁰⁷ TEAS is an organisation based in London and set up to promote Azerbaijani interests in Europe by organising different events.²⁰⁸ For instance, Mr Mariani acknowledged that he had participated in some seminars organised by TEAS.²⁰⁹ TEAS has different branches in other European countries.²¹⁰ The director of TEAS is Mr Tale Heydarov, son of Mr Kamaladdin Heydarov.²¹¹ The NGOs that reported on Azerbaijan considered that TEAS was the “clean” part of the Azerbaijani lobbying machine (see paragraph 42 above). According to Mr Walter, it was clear that TEAS, just like some other organisations,²¹² was being supported with money coming from Baku.²¹³

197. Mr Lindblad explained that after leaving PACE in 2010, he had been approached by TEAS to work for them as a lobbyist. He had been recruited for TEAS by Ms Eliza Pieter, who had worked as a secretary in the PACE Committee on Political Affairs and Democracy. Mr Lindblad considered that she had recruited him because she knew that he had been on the Azerbaijani side in PACE concerning the issues related to the Nagorno-Karabakh conflict with Armenia. She had also been his liaison person in TEAS.

198. According to information made available to the Investigation Body by the PACE secretariat, Ms Pieter had worked as a temporary staff member in 2006, replacing another person who had been on maternity leave. After leaving the PACE secretariat, Ms Pieter made public appearances at which she was presented as the Director of TEAS in Strasbourg.²¹⁴ She was also known to Mr Mariani, who, as noted above, participated in some events organised by TEAS.²¹⁵

199. Mr Lindblad further explained that for the first interview, he had asked another member of the PACE secretariat to accompany him.²¹⁶ The interview had taken place in Brussels in a rented office. Later, Mr Lindblad had also had an interview with the chairman of TEAS. For Mr Lindblad, it had been immediately clear that TEAS was not an ordinary NGO and that it was financed by the government. At the interview, Mr Lindblad had made it clear that he would lobby only on the Nagorno-Karabakh issue.

²⁰⁵ Lise Christoffersen’s oral evidence (10 October 2017); Andres Herkel’s oral evidence (23 October 2017); and oral evidence given by the members of the PACE secretariat.

²⁰⁶ Göran Lindblad’s oral evidence (12 December 2017), and further documents submitted to the Investigation Body following the hearing.

²⁰⁷ Further information on TEAS available at <http://teas.eu/> (last accessed on 15 February 2018).

²⁰⁸ See further on a domestic UK issue raised in this respect <http://www.telegraph.co.uk/news/worldnews/wiki/leaks/8299344/WikiLeaks-William-Harry-and-the-Abramovich-of-Azerbaijan.html> (last accessed on 15 February 2018).

²⁰⁹ Thierry Mariani’s oral evidence (22 January 2018).

²¹⁰ See <https://lobbyfacts.eu/representative/79cf5f9b402e4201bce34b76ad2893c1/the-european-azerbaijan-society-brussels-office> (last accessed on 15 February 2018).

²¹¹ Göran Lindblad’s oral evidence (12 December 2017).

²¹² Mr Walter mentioned the Conservative friends of Azerbaijan and the Azerbaijan Parliamentary friendship group in the UK.

²¹³ Robert Walter’s oral evidence (7 November 2017).

²¹⁴ See further <http://www.prweb.com/releases/2016/02/prweb13220301.htm> (last accessed on 15 February 2018).

²¹⁵ Thierry Mariani’s oral evidence (22 January 2018).

²¹⁶ That person was heard by the Investigation Body and confirmed the statement given by Mr Lindblad.

200. Mr Lindblad stated that he had become a formal consultant with a monthly salary from TEAS to lobby on the Nagorno-Karabakh issue in PACE and the EP. When he had been on the payroll of TEAS he had attended events in the Parliamentary Assembly and the EP. He had also sometimes attended committee meetings of PACE in Paris. Mr Lindblad explained that he had worked for TEAS over some eighteen months. At that stage, both sides had realised that they did not share the same values, and they had parted company.²¹⁷ In the meantime, people in TEAS had become upset over the caviar diplomacy report and for a while Mr Lindblad had been lobbying only in the EP.

201. Mr Lindblad submitted that he had not been asked to offer bribes or benefits to anyone. He had simply been required to promote Azerbaijani interests in discussions with other politicians. He had not been given any specific instructions on how to carry out lobbying but had simply been presented with the general aims of promoting Azerbaijan. There had not been any special reporting mechanism in place and he had simply periodically reported on his activities.

202. Mr Lindblad accepted that he had had access to the PACE building with his badge as an honorary member. He had been open with the then President and the Secretary General of PACE, as well as others whom he had met as a lobbyist, that he had been lobbying for Azerbaijan. He thought that that had been necessary for the sake of transparency. According to the available information on the entries of former PACE MPs to the PACE building, in 2016 Mr Lindblad used his honorary badge eleven times to enter the PACE building.²¹⁸

203. Mr Lindblad lastly explained that he knew Mr Suleymanov and Mr Muslum Mammadov from the Azerbaijani delegation to PACE. However, when he had become a lobbyist for TEAS, the Azerbaijani delegation in PACE had not been keen on talking to him at all, because there was some infighting between TEAS and other parts of the Azerbaijani Government. Mr Lindblad had the impression that the Azerbaijani delegation in PACE did not really like TEAS. In this connection, Mr Seyidov stated that he had seen the representatives of TEAS in PACE but he had no further information about them. However, he knew that TEAS was very active.²¹⁹

(e) The use of corruptive means to foster Azerbaijan's interests in PACE

204. As noted above, save for the revelations from the Italian criminal case against Mr Volontè, the Investigation Body has no other direct and documented evidence showing that money changed hands in the context of PACE's various activities concerning Azerbaijan. Nevertheless, the following allegations and facts in respect of various corruptive activities were brought to the Investigation Body's attention.

(i) Alleged organisation of corruptive activities

205. According to the oral evidence given by Mr Arif Mammadov,²²⁰ former Ambassador of Azerbaijan to the COE, the use of money to foster Azerbaijan's interests in PACE, or what he described as "dirty lobbying", was done in parallel with diplomatic work. Mr Mammadov stated that the Permanent Representation of Azerbaijan to the COE had not been involved in this. The dirty lobbying had been managed through the Presidential Administration and the man in charge of it in PACE was Mr Suleymanov directly. Mr Mammadov had heard from the members of the Azerbaijani delegation to PACE that Mr Suleymanov had had EUR 30 million at his disposal for this dirty lobbying.

²¹⁷ See further paragraph 280 below.

²¹⁸ These entries occurred in the period between 18 and 20 April 2016.

²¹⁹ Samad Seyidov's oral evidence (22 January 2018).

²²⁰ Arif Mammadov's oral evidence (10 October 2017).

The money had come from the Minister of Emergency Situations, Mr Kamaladdin Heydarov, and not from the budget. For his part, Mr Seyidov rejected the insinuations that there existed a special fund and stressed that, had anything of that kind existed, it would have been investigated by the Azerbaijani Parliament.²²¹

206. According to the evidence given by Ms Yunus,²²² a human-rights activist from Azerbaijan, money for bribing European politicians came from different sources, and there was a person from the Presidential Administration who was responsible for collecting money from the law-enforcement agencies. She had learned this from various State officials. She also believed that Mr Kamaladdin Heydarov was providing money for corruption purposes, but that he used his own funds as he was very rich. According to Ms Yunus, Mr Suleymanov had been in charge of distributing money within PACE and he had worked closely with the member of the Presidential Administration.

207. In this connection, Ms Yunus submitted that in 2010 she had met a member of the Müsavat Party and a relative of his, a young female student whose name she could no longer remember. The student had told her that all students going to Strasbourg, but also elsewhere in Europe, had been given EUR 10,000 in cash, which they had had to deliver in Strasbourg. The money would then be distributed to members of PACE, especially by Mr Suleymanov, who collected the money from the students. In exchange, the students would receive free tickets. According to Ms Yunus there was a special Government programme to send students abroad, and they would all take part in this system. They had no choice but to bring money to Strasbourg.

208. The suggestion that Mr Suleymanov had had a key role in the promotion of Azerbaijani interests within the Azerbaijani delegation to PACE came also from the oral evidence given by a number of PACE secretariat members and MPs,²²³ who testified that he was only rarely seen at the PACE plenary and in committees, but that when issues concerning Azerbaijan were discussed he was always there and was very vocal.

209. Mr Mammadov further stated that Mr Suleymanov had not been responsible to anyone and that even Mr Seyidov, the head of the Azerbaijani delegation to PACE, had been kept away from Mr Suleymanov's activities. Once, Mr Seyidov had tried to oppose this but a financial inspection had been sent to his university which had found that a certain amount of money had been missing from the accounts. This had been done to discipline Mr Seyidov. Thereafter he had not intervened in the work of Mr Suleymanov. For his part, Mr Seyidov, in his evidence to the Investigation Body, rejected all this as mere insinuation. He claimed that, in alleging this, Mr Arif Mammadov was "trying to create a political setup".

210. Moreover, according to Mr Mammadov, the issue of dirty lobbying had been discussed in meetings of the Foreign Ministry, which knew that such activities could one day backfire. The Minister considered himself to be incapable of dealing with such activities as they were directly under the Presidential Administration. The persons who guided the work of Mr Suleymanov were the Head of the Presidential Administration and another person. Moreover, Mr Suleymanov had also cooperated with the head of the department responsible for working with the law-enforcement agency on dirty lobbying.

211. Mr Mammadov had not seen any envelopes changing hands. However, he explained that he had seen Mr Suleymanov meeting members of different delegations in the corridors and heard him

²²¹ Samad Seyidov's oral evidence (22 January 2018).

²²² Leyla Yunus' oral evidence (6 November 2017).

²²³ Wojciech Sawicki's oral evidence (5 September 2017); Paul Wille's oral evidence (11 October 2017); Andres Herkel's oral evidence (23 October 2017); Robert Walter's oral evidence (7 November 2017).

saying that he would come to their hotels in the evening. Mr Mammadov had also seen Mr Suleymanov with other PACE MPs having lunch at the COE restaurant and meeting outside the COE premises.

212. Mr Mammadov further explained that in his activities Mr Suleymanov had been assisted by Mr Muslum Mammadov, who had first served as Mr Suleymanov's interpreter and had later become an MP in PACE.²²⁴ Mr Muslum Mammadov also seems to be closely related to other former PACE MPs (see paragraph 279 below). Mr Mariani,²²⁵ in his statement to the Investigation Body, acknowledged that he had given assurances for Mr Muslum Mammadov when he had come to study in France.

213. The Investigation Body also notes that Mr Muslum Mammadov is associated with the Office of Communication of Azerbaijan (OCAZ).²²⁶ OCAZ is an NGO established in Brussels (Belgium) whose aim is to "provide as much as possible information on Azerbaijan" in Europe and in particular to the officials in the European institutions. The NGO Freedom Files considered OCAZ to be the "dirty hand" of the Azerbaijani lobbying system.²²⁷ The director of OCAZ is Mr Muslum Mammadov and its declared lobbyists are Mr Khalid Mammadov, Mr Muslum Mammadov and Mr Emil Kiriloff.

214. Moreover, the publicly available information suggested that Mr Wille, who was regarded in the above-cited NGO reports as a supporter of Azerbaijan in PACE, was associated with OCAZ.²²⁸ In his statement given to the Investigation Body, Mr Wille acknowledged his involvement in that organisation. He stated that he did not see any problem with his joining OCAZ, whose main activity was to open the doors of the European Parliament to the people of Azerbaijan.

215. Mr Wille explained that he had joined OCAZ in 2011, and in July 2011 he had become its administrator. He had resigned from that post on 12 September 2017. He had never received any payment or signed any document as the administrator. He had resigned after being informed of the establishment of the Investigation Body. Mr Wille also submitted that he had no relationship with Mr Muslum Mammadov. Mr Mammadov had never reported to him on his activities as a lobbyist. Mr Wille had merely acknowledged the activity reports made by him as the director of OCAZ. During the board and the general assembly meetings and in the presence of representatives from the lawyer's office, Mr Wille had found no reasons to criticise or oppose the reports.²²⁹

216. As to his role as the Permanent Representative of Azerbaijan to the COE, Mr Arif Mammadov explained that he had not met MPs when they came to Strasbourg. His mission had been to organise the delegation's stay in Strasbourg, and to take care of the technical aspects,

²²⁴ See further on Mr Muslum Mammadov's PACE member file <http://assembly.coe.int/nw/xml/AssemblyList/MP-Details-EN.asp?MemberID=7523> (last accessed on 15 February 2018). Note also that Mr Suleymanov and Mr Muslum Mammadov are no longer members of PACE as of 21 January 2018. Mr Seyidov explained at the hearing before the Investigation Body that it was the result of the regular rotation of delegates in the Azerbaijani delegation.

²²⁵ Thierry Mariani's oral evidence (22 January 2018).

²²⁶ Further information on OCAZ is available at <https://lobbyfacts.eu/representative/f448295eb8cc47538c92c8cef5967547> (last accessed on 15 February 2018). Mr Goris, when heard by the Investigation Body, stated that Mr Muslum Mammadov had explained to him that he worked for OCAZ on matters such as organising exhibitions. Mr Seyidov, in his statement to the Investigation Body, denied knowing that Mr Muslum Mammadov was linked to OCAZ. Mr Seyidov also stressed that he had heard of OCAZ but had no contact with it.

²²⁷ Freedom Files report, p. 90.

²²⁸ See further <http://www.lalibre.be/actu/politique-belge/l-ex-senateur-open-vld-paul-wille-etait-aussi-lobbyiste-pour-l-azerbaïdjan-59b9043dcd70fc627d7f4bea> (last accessed on 15 February 2018).

²²⁹ Paul Wille' oral evidence (11 October 2017) and written statement (14 November 2017).

such as the distribution of documents. Moreover, diplomatic members of the Permanent Representation had been required to prepare reports on who in the Assembly voted against Azerbaijan. On instructions from Baku, this information had then been sent to the Foreign Ministry, and from there forwarded to the relevant embassies in the respective countries. Later on, the embassies would report that they had had meetings concerning the matter and that people who voted had apologised for voting in a particular way.

217. In this connection, the Investigation Body heard evidence suggesting that some ambassadors would attend the PACE meetings and take notes.²³⁰ Mr Fischer stated that the fact that information on particular voting in the PACE plenary was public created pressure on MPs coming from some countries, particularly those from eastern Europe. A member of the PACE secretariat also gave an example of a Croatian MP in PACE who had allegedly said that she had voted on some matters in favour of Azerbaijan as her country needed oil and gas. Moreover, if she voted against, the Croatian Ambassador to Azerbaijan would be summoned by the authorities and he would need to provide explanations.

(ii) Alleged distribution of money within PACE

218. Several witnesses from the PACE secretariat alleged that there was a system of distribution of money within PACE. It was suggested that Mr Laakso, who lobbied in PACE in favour of Azerbaijan, had been distributing banknotes of EUR 500 and that Mr Goris had been in charge of distributing envelopes with money within the EPP political group. There was also allegedly a system of envelopes which were distributed to MPs when it came to the election of high COE officials in PACE. The money was coming from Azerbaijan and was distributed either in MPs' hotel rooms or in the offices of national delegations. The envelopes contained cash in small bills. A group of MPs would be in charge of distributing the money, thereby literally buying the votes.

219. In this connection, a witness from the PACE secretariat stated that in April 2017, in the context of the hearing of Mr Agramunt, Mr Xuclà and Mr Destexhe concerning their visit to Syria, Mr Agramunt had stated that he had been the victim of a conspiracy and alleged that his room at the Sofitel hotel in Strasbourg had been searched. According to him, whoever had searched his room had been looking for evidence of money transfers in his computer. What was surprising for the witness was that Mr Agramunt had stated that whoever had searched his room had not taken any cash. The witness recalled that, after the hearing, in support of his theory about how his room had been searched in order to find sensitive data, Mr Agramunt had alleged that an envelope containing EUR 15,000 in cash had not been touched.

220. Another witness from the PACE secretariat stated that on one occasion shortly before a committee meeting, when attending an unofficial dinner, Mr Agramunt had had a significant amount of cash on him.

(iii) Allegations concerning the appointments of Mr Agramunt as Chair of the EPP and President of PACE

221. The appointment of Mr Agramunt, first as Chair of the EPP and then as President of PACE,²³¹ was mentioned as an example of the use of corrupt activities in PACE. Mr Arif Mammadov suggested

²³⁰ Axel Fischer's oral evidence (22 January 2018).

²³¹ Mr Agramunt was appointed President of PACE on 25 January 2016. Following the submission of a motion for his dismissal by a number of PACE MPs (Doc. 14383, 30 June 2017), Mr Agramunt resigned from his post on 6 October 2017.

that at least ninety percent of Mr Agramunt's success belonged to the support, including support of a financial nature, given by Azerbaijan to his candidature for the post of President.²³²

222. A senior member of the PACE secretariat brought to the Investigation Body's attention the example of a Lithuanian Member of Parliament who had been prohibited from travelling by his own parliament because of a case of domestic violence against him, but who had appeared in PACE for one day merely to participate in the election of Mr Agramunt to his post in the EPP. It was hard for the witness to believe that he would have paid for his ticket and his hotel expenses out of his own pocket.

223. In this connection, during his hearing before the Investigation Body, Mr Arieu testified about an incident that had taken place in 2013 when the EPP had needed to elect a new president because Mr Volontè had not been re-elected to the Italian Parliament and was no longer a member of PACE. Mr Arieu stated that the day before his departure from Kyiv to Strasbourg for the 2013 autumn session, he had received a phone call from a person who had introduced himself as Elchin Mammadov, the president of SOCAR²³³ Ukraine. Mr Mammadov had come with his bodyguards and said that he knew that Mr Arieu was going to Strasbourg and requested Mr Arieu to support the candidature of Mr Agramunt rather than that of the candidate from Finland. On Mr Arieu's insistence, Mr Mammadov had explained that he had been asked to talk to Mr Arieu by someone else and, at that stage, he had pointed his finger upwards. Mr Mammadov had also explained that he would give any assistance needed to Mr Arieu if he would vote for Mr Agramunt. Although there had been no direct bribe or money offered, it had been clear to Mr Arieu that this offer amounted to a bribe. Mr Mammadov had also asked whether he could make a note that he had spoken to Mr Arieu. For his part, Mr Arieu had not promised anything but had told his colleagues, Mr Serhiy Sobolev and Ms Lesia Orobets, what had happened to him.

224. Mr Arieu could not say whether there was any other person who had had a similar experience. He also explained that at the time he had been in PACE for only nine months and had been unable clearly to identify what had been happening, but other colleagues had told him that it was a very unusual election process.

B. The Strässer affair

1. PACE's work on the issue of political prisoners

225. The Strässer reports represented a continuation of the PACE work on the issue of political prisoners in the COE member States, in particular Armenia and Azerbaijan.

226. The notion of political prisoners was first elaborated within the COE in 2001 by the independent experts of the Secretary General,²³⁴ mandated to assess cases of alleged political prisoners in Armenia and Azerbaijan in the context of the accession to the COE of the two States (see paragraphs 53-54 above). The experts acted in a quasi-judicial capacity and undertook the task of

²³² Arif Mammadov's oral evidence (10 October 2017).

²³³ SOCAR is the State Oil Company of Azerbaijan Republic (see further <http://www.socar.az/socar/en/home>, last accessed on 15 February 2018).

²³⁴ Mr Stefan Trechsel, former President of the European Commission of Human Rights and judge on the International Criminal Tribunal for the former Yugoslavia (ICTY), Mr Evert Alkema, former member of the Dutch Council of State and of the European Commission of Human Rights, and Mr Alexander Arabadjiev, formerly a judge on the Bulgarian Constitutional Court and judge of the Court of Justice of the European Union.

determining who could “be defined as a political prisoner on the basis of objective criteria in the light of the case law of the European Court of Human Rights and Council of Europe standards”.²³⁵ They examined 716 cases of alleged “political prisoners” on the basis of a set of pre-established criteria to which all relevant COE bodies, including the Azerbaijani authorities, agreed. On the basis of their assessment, the experts concluded that 62 persons were political prisoners, whereas 62 were not, or were no longer.²³⁶

227. The criteria for the assessment of a political prisoner developed by the independent experts were the following: (1) if the detention had been imposed in violation of one of the fundamental guarantees set out in the ECHR, in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association; (2) if the detention had been imposed for purely political reasons without connection to any offence; (3) if, for political motives, the length of the detention or its conditions were clearly out of proportion to the offence of which the person had been found guilty or was suspected; (4) if, for political motives, he or she was detained in a discriminatory manner as compared to other persons; or, (5) if the detention was the result of proceedings which had been clearly unfair and this appeared to be connected with political motives on the part of the authorities. However, the common understanding was that persons convicted of violent crimes such as acts of terrorism could not claim to be “political prisoners” even if they purported to have acted for “political” motives.²³⁷

228. In the period since Azerbaijan joined the COE on 25 January 2001, and preceding the Strässer report, the issue of political prisoners in that country was examined within PACE on four occasions: in January 2002, June 2003, January 2004 and June 2005.²³⁸

229. The first rapporteur on the issue of political prisoners in Azerbaijan was Mr Clerfayt, who was succeeded in 2003 by Lord Bruce. When heard by the Investigation Body, Lord Bruce stated that, despite his opposition to Azerbaijan’s access to the COE before it had fully met the necessary accession criteria, there had been no opposition to his appointment as rapporteur on the issue of political prisoners. Lord Bruce explained that, on taking over the task, he had asked the secretariat members who had been working with Mr Clerfayt to brief him. He had learned that there was a network of NGOs in Azerbaijan who were openly campaigning for human rights and more open democracy and who had produced lists of “alleged political prisoners”, consisting of some 1,000 persons. On the basis of this list, the witness had made several visits to Baku and organised several meetings outside Azerbaijan where he had met President Ilham Aliyev and other relevant State officials, as well as representatives of NGOs. As a result of his work, about eight or ten people

²³⁵ The independent experts based their work on the work of Mr Carl Aage Nørgaard, former President of the European Commission of Human Rights, who had been invited by the UN Security Council to identify “political prisoners” in Namibia in 1989/90.

²³⁶ See further, Committee on Legal Affairs and Human Rights, Report (Doc. 13011) 5 September 2012 (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18995&lang=en>, last accessed on 15 February 2018).

²³⁷ Ibid.

²³⁸ See Resolution 1272 (2002), rapporteur Mr Georges Clerfayt (available at <http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=16979&lang=en>, last accessed on 15 February 2018); Resolution 1359 (2004) Resolution 1359 (2004) (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17179&lang=en>, last accessed on 15 February 2018), Resolution 1457 (2005) (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17355&lang=en>, last accessed on 15 February 2018), and Recommendation 1711 (2005) (available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17356&lang=en>, last accessed on 15 February 2018), all under the rapporteurship of Lord Bruce.

on that list had in fact been released, but other people had subsequently been arrested. However, there had also been some persons on the list who had committed terrorist bombings.

230. When working on the Azerbaijani political prisoners issue, Lord Bruce had not detected any hostility coming from Azerbaijani or other parliamentarians. The Azerbaijani delegation had constantly maintained that everything was fine, but had cooperated with him. There had however been hardliners who considered that because of its geopolitical situation, Azerbaijan was under an existential threat from all kinds of forces. Following the work of Lord Bruce, opinion was divided as to whether to leave the matter of political prisoners to be decided by the ECtHR or whether PACE should continue to have a special rapporteur on the matter, particularly since there was an impression that the authorities were “replaying the game”.

231. As noted above, Lord Bruce was succeeded by Mr Strässer as rapporteur on the issue of political prisoners in Azerbaijan.

2. Mr Strässer as rapporteur on the issue of political prisoners in Azerbaijan

232. On 18 December 2007 a group of MPs²³⁹ submitted a motion for a resolution on “the follow-up to the issue of political prisoners in Azerbaijan”.²⁴⁰ They argued that in addition to the work of the Monitoring Committee, there was a need for the appointment of a special rapporteur in the Committee on Legal Affairs and Human Rights on the follow-up to the work of Lord Bruce on the issue of political prisoners in Azerbaijan. Mr Strässer was appointed rapporteur on 24 March 2009. When being appointed, he declared that he had no conflict of interest.²⁴¹

233. On 19 May 2009 a group of MPs, some of whom were considered in the ESI reports as “apologists”,²⁴² but others of whom were seen as “critics”²⁴³ of Azerbaijan in PACE, submitted a motion for a resolution on the definition of political prisoners. It was argued that a report was needed to establish the criteria to be applied in determining who should be regarded as a genuine political prisoner.²⁴⁴ Mr Strässer was appointed rapporteur for this report in the Committee on Legal Affairs and Human Rights on 16 December 2009. At the time of his appointment, Mr Strässer was not present at the Committee meeting. The chairperson reminded the Committee of the relevant PACE provisions on conflict of interest.²⁴⁵

234. On 24 June 2010 the two reports were joined. The appointment of Mr Strässer as rapporteur did not initially cause any particular controversy or objection.

²³⁹ Mr Christos Pourgourides; Ms Marie-Louise Bemelmans-Videc; Ms Anna Benaki-Psarouda; Mr Luc Van Den Brande, Belgium; Mr Boriss Cilevičs; Mr Andres Herkel; Mr Erik Jurgens; Ms Sabine Leutheusser-Schnarrenberger; Mr Andrea Manzella; Mr Andrew McIntosh; Mr Pieter Omtzigt; Mr Kimmo Sasi.

²⁴⁰ Motion for a resolution (Doc. 11468): The follow-up to the issue of political prisoners in Azerbaijan (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=11794&lang=en>, last accessed on 15 February 2018).

²⁴¹ Documentary evidence provided by the PACE secretariat upon the request of the Investigation Body.

²⁴² Such as, for instance, Mr Agramunt, Mr Hancock, Mr Lintner, Mr Walter, Mr Wille.

²⁴³ Such as, for instance, Mr Gross.

²⁴⁴ See Motion for a resolution (Doc. 11922) on the definition of political prisoners (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12704&lang=en>, last accessed on 15 February 2018).

²⁴⁵ Documentary evidence provided by the PACE secretariat upon the request of the Investigation Body.

235. On 13 April 2011 a new motion for a resolution on the criteria for the definition of a political prisoner was submitted by a group of MPs, including both “apologists”²⁴⁶ and “critics”²⁴⁷ of Azerbaijan. They argued that there were different definitions of who was to be considered as a political prisoner, as the Assembly had never taken a decision in the matter. They also submitted that the existing criteria had been developed with regard to a specific country, but that there was not a general definition that could be used as a rule applicable in every member State. In their view, the absence of such a definition created a serious risk of double standards and unwanted precedents, and could damage the credibility of the Assembly.²⁴⁸ This motion for a resolution was forwarded to the Committee on Legal Affairs and Human Rights for information.

236. At its meeting on 5 October 2011 the Committee on Legal Affairs and Human Rights renamed the joint report “Revisiting the issue of political prisoners” following the proposal of the chairperson. This was a compromise reached with the Azerbaijani delegation, which objected to its country being singled out in the title of the report and opposed Mr Strässer’s fact-finding visit to Azerbaijan.²⁴⁹

237. At its meeting on 21 May 2012, the Committee decided to split the dual mandate of Mr Strässer (see paragraph 234 above) and asked him to present two separate reports, one on the definition of political prisoners and the other on the alleged cases of political prisoners in Azerbaijan. The result of this decision was that it restored the situation that existed before the merger of the two motions on 24 June 2010. Consequently, the title change of October 2011 no longer applied.²⁵⁰

238. The split of the Strässer report was largely seen by the PACE secretariat and by Mr Strässer himself as a result of the Azerbaijani lobbying and an attempt to undermine, by complicating and delaying Mr Strässer’s work. Other witnesses, however, considered that this had essentially been a legitimate parliamentary manoeuvre on the part of the Azerbaijani delegation.

239. The report on the definition of political prisoners was adopted by the Committee on Legal Affairs and Human Rights on 5 September 2012.²⁵¹ This report reaffirmed the criteria for the assessment of a political prisoner established by the independent experts in 2001 (see paragraph 227 above). It also added that those deprived of their personal liberty for terrorist crimes would not be considered political prisoners if they had been prosecuted and sentenced for such crimes in accordance with national legislation and in compliance with the European Convention on Human Rights. On this basis, the report invited the competent authorities of all the COE member States to reassess the cases of any alleged political prisoners by application of those criteria and to release or retry any such prisoners as appropriate.

240. The report on the alleged cases of political prisoners in Azerbaijan, entitled “The follow-up to the issue of political prisoners in Azerbaijan”²⁵² was adopted by the Committee on Legal Affairs

²⁴⁶ Such as, for instance, Mr Conde; Mr Hancock; Mr Iwiński; Mr Jelinčič Plemeniti; Mr Laakso; Mr Volonté.

²⁴⁷ Such as, for instance, Mr Pieter Omtzigt.

²⁴⁸ Motion for a resolution (Doc. 12587): Criteria for the definition of a political prisoner (available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12668&lang=en>, last accessed on 15 February 2018).

²⁴⁹ See the explanatory memorandum to the Report (Doc. 13079): The follow-up to the issue of political prisoners in Azerbaijan (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19217&lang=en>, last accessed on 15 February 2018).

²⁵⁰ Ibid.

²⁵¹ Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18995&lang=en> (last accessed on 15 February 2018).

²⁵² Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19217&lang=en> (last accessed on 15 February 2018).

and Human Rights on 14 December 2012. The report found that the issue of political prisoners had still not been resolved in Azerbaijan and that in addition to several unresolved cases dating back to the accession of Azerbaijan to the COE, a number of new cases of political prisoners had arisen, including politicians and activists linked to the opposition, as well as journalists, bloggers and peaceful protesters sentenced to heavy prison terms. The report also noted that the ECtHR had already found violations of the ECHR in several cases²⁵³ and that the cases of other alleged political prisoners were still pending before the ECtHR.²⁵⁴ The Azerbaijani authorities were therefore invited speedily and effectively to resolve the cases of those persons and to take appropriate measures in order to ensure that there were no new cases of presumed political prisoners, in particular by refraining from arresting and prosecuting participants in peaceful demonstrations, by refraining from criminalising the expression of political and religious views in the media, by eliminating torture and other forms of ill-treatment of suspects in police custody and pre-trial detention, by allowing all suspects to be assisted by a freely chosen lawyer and by ensuring that all searches and seizures were performed in the presence of truly independent witnesses.

3. *The particular circumstances of Mr Strässer's work*

241. According to several witnesses, both MPs and members of the PACE secretariat, Mr Strässer had worked with dedication on the tasks assigned to him. However, an issue arose over the fact that Mr Strässer had been outspoken in criticising Azerbaijan and had even organised some events in the German Parliament on the issue of political prisoners in that country. That had created the impression of a lack of objectivity in his work. At the same time, the German delegation had strongly defended him, so that a tense and polarised situation had been created within PACE.

242. When heard by the Investigation Body, Mr Strässer stressed that he had had no negative feelings or preconceived ideas concerning Azerbaijan. He confirmed that he had participated in some side-events on the issue of political prisoners in Azerbaijan and that there had been a major event organised in Berlin in 2011 which had brought together citizens of Azerbaijan who had emigrated to western European countries. Following that event, an opposition newspaper outlet had invented an interview with Mr Strässer, and this had been the reason for considering that he had had preconceived ideas concerning Azerbaijan.

243. Mr Strässer had made several attempts to obtain the cooperation of the Azerbaijani authorities in organising a fact-finding visit.²⁵⁵ He had applied for a visa through the relevant services of the PACE secretariat and through the secretariat of his national parliament. However, he had not been given a visa.²⁵⁶ According to oral evidence given by a member of the PACE secretariat who worked with Mr Strässer on the report, he (that staff member) was also refused a visa to enter Azerbaijan.

²⁵³ The Report made reference in particular to the case of *Fatullayev v. Azerbaijan* (no. 40984/07, 22 April 2010).

²⁵⁴ The most prominent case examined by the ECtHR in this context is the one of *Ilgar Mammadov v. Azerbaijan* (no. 15172/13, 22 May 2014) and *Ilgar Mammadov v. Azerbaijan (no. 2)* (no. 919/15, 16 November 2017). A case concerning the infringement procedure against Azerbaijan related to the alleged non-enforcement of the *Ilgar Mammadov v. Azerbaijan* judgment is currently pending before the ECtHR (see further Press release ECHR 390 (2017), 14.12.2017).

²⁵⁵ The explanatory memorandum to the Report (Doc. 13079).

²⁵⁶ Andrzej Drzemczewski's oral evidence (10 October 2017).

244. Mr Strässer explained that on one occasion he had spoken to the representatives of the Azerbaijani Embassy in Berlin, who had confirmed that he could get a visa to travel to the country as a tourist but not as a PACE rapporteur. At the same time, however, the two co-rapporteurs in the Monitoring Committee, Mr Agramunt and Mr Debono Grech (see paragraph 270 below), who were also working on the issue of political prisoners, had been given access to the country.²⁵⁷

245. In August 2011 Mr Strässer's visa application was officially rejected by the Azerbaijani authorities. On that occasion, a senior official of the Azerbaijani Foreign Ministry's press service reportedly stated that Mr Strässer's visa application had been rejected because of his mandate. In this connection, it was stressed that there were no criteria to determine who was a political prisoner and that PACE was trying to impose a definition of political prisoner on Azerbaijan. Mr Strässer's visit was said to be meaningless because of its purpose and that defining his mandate in the way it had been was an attempt to isolate Azerbaijan.²⁵⁸

246. This was not the only example of a visa being refused to a member of the Assembly. A PACE MP, Mr Roquet, could not obtain a visa from the Azerbaijani authorities because he had visited Nagorno-Karabakh.²⁵⁹ Mr Walter also explained that he had been tasked with producing a report on the Nagorno-Karabakh conflict but had never received an invitation to go to Yerevan, nor had the Armenian authorities agreed to facilitate his meetings with the de facto authorities in the region.²⁶⁰ The same issue was raised by Ms Marković concerning her work on Nagorno-Karabakh (see paragraph 134 above).

247. Despite several interventions from the chairmen of the Committee on Legal Affairs and Human Rights, two further attempts by Mr Strässer to organise a visit to Azerbaijan in November 2011 and at the end of January 2012 were unsuccessful. Eventually, however, the committee was informed at its meeting on 12 March 2012 that a date for a visit had been set for the first week of May 2012. However, one week before the agreed visit, during the April 2012 part-session, the Azerbaijani delegation set a new condition for granting Mr Strässer's visa, namely that he should agree to discuss only the theoretical definition of political prisoner and not the alleged Azerbaijani cases. Mr Strässer refused these conditions and the committee, at its meeting on 24 April 2012, authorised him to present his report without the usual fact-finding visit.²⁶¹

248. However, in the course of his work, Mr Strässer interviewed a number of persons from Azerbaijan who gave information as to the situation in the country. This was confirmed by Ms Yunus, who provided a list of political prisoners in Azerbaijan to Mr Strässer.²⁶² Mr Strässer also organised two hearings, on 24 June 2010 and 26 January 2012, with the participation of experts on the definition of political prisoners.

²⁵⁷ Christoph Strässer's oral evidence (10 October 2017).

²⁵⁸ Radio Free Europe-Radio Liberty (press report available at https://www.rferl.org/a/azerbaijan_will_not_give Visa to pace rapporteur/24300593.html, last accessed on 15 February 2018).

²⁵⁹ Wojciech Sawicki's oral evidence (5 September 2017).

²⁶⁰ Robert Walter's oral evidence (7 November 2017). See further, the explanatory memorandum to the Report (Doc. 13930): Escalation of violence in Nagorno-Karabakh and the other occupied territories of Azerbaijan, 11 December 2015 (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22255&lang=en>, last accessed on 15 February 2018).

²⁶¹ The explanatory memorandum to the Report (Doc. 13079).

²⁶² Information provided by Leyla Yunus on 31 October 2017.

4. Particular circumstances concerning the vote in the PACE plenary on the Strässer reports

(a) Report on the definition of political prisoners

(i) The vote on the report in the PACE plenary

249. The report on the definition of political prisoners was put to a vote during the Assembly's plenary session in October 2012.

250. Several proposals and amendments were made concerning the report. The most controversial amendment, which was considered to be in favour of Azerbaijan, was Amendment 2.²⁶³ The proposed amendment read: “[t]he Parliamentary Assembly confirms that the interpretation and application of any criteria defining a political prisoner are the exclusive competence of the European Court of Human Rights, which is the only authority to assess violations of fundamental rights and freedoms, as stipulated in the European Convention on Human Rights and its Protocols.”

251. In the explanatory report to the amendment, relying on the fact that the initial definition of political prisoners had been adopted with reference to the work of Mr Carl Aage Nørgaard in the case of Namibia in 1989/90 (see paragraph 226 above), it was stated that “[a] civil war in Southern Africa some 25 years ago should not form the basis of objective standards for all Council of Europe member States in the present day. Only the current case-law of the European Court of Human Rights should be considered as the ‘gold standard’ in this regard.”

252. The vote on Amendment 2 was divided, 89 MPs voting in favour and 89 against, with 5 abstentions. All members of the Azerbaijani delegation present voted in favour of the amendment. Under the relevant PACE rules, the voting result meant that the amendment was not adopted.²⁶⁴

253. On 3 October 2012 a Resolution²⁶⁵ on the basis of the report on the definition of political prisoners was eventually adopted with 100 votes in favour, 64 against and 12 abstentions.²⁶⁶ All members of the Azerbaijani delegation present during the voting in the plenary voted against the Resolution.

(ii) Other facts established and allegations heard by the Investigation Body

254. The Investigation Body heard evidence from members of the PACE Secretariat that during the vote on the Strässer reports in the Committee of Legal Affairs and Human Rights, both supporters and opponents of Mr Strässer had mobilised for their respective causes.

255. On 11 October 2012 Mr Suleymanov sent an email for the attention of the President and of the SG of PACE.²⁶⁷ The email was also sent to a number of PACE MPs. It contained an attached letter by which Mr Suleymanov accused Mr Drzemczewski, the then head of the PACE Committee of Legal

²⁶³ Signed by the following MPs: Mr Patrick Moriau; Mr Conde; Mr George Loukaides; Mr Younal Loutfi; Mr Pasquale Nessa; Mr Øyvind Vaksdal. Mr Strässer saw Mr Code as the key figure behind this amendment (Christoph Strässer's oral evidence (10 October 2017)).

²⁶⁴ Further details on the voting are available at <http://assembly.coe.int/nw/xml/Votes/DB-VotesResults-EN.asp?VoteID=34331&DocID=14306&MemberID=> (last accessed on 15 February 2018).

²⁶⁵ Resolution 1900 (2012): The definition of political prisoner (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19150&lang=en>, last accessed on 15 February 2018).

²⁶⁶ Further details on the voting are available at <http://assembly.coe.int/nw/xml/Votes/DB-VotesResults-EN.asp?VoteID=34332&DocID=14306> (last accessed on 15 February 2018). For the details on the discussion in the plenary, see the ESI report “Showdown in Strasbourg: The Political Prisoner Debate in October 2012”.

²⁶⁷ The email and the attachments were made available to the Investigation Body.

Affairs and Human Rights secretariat, and his deputy Mr Günter Schirmer, current head of that Committee's secretariat, of lobbying in different ways to prevent the adoption of Amendment 2. He also accused the Committee's secretariat of misrepresenting the result of the vote in the Committee concerning the amendment. In addition, he argued that Mr Gross and the then head of the German delegation to PACE had made threats and applied pressure in order to have the Strässer report adopted. Mr Suleymanov also complained of unfair treatment of his country by different MPs and NGOs, in particular in connection with the allegations of "caviar diplomacy".

256. On the same day, Mr McNamara replied by email²⁶⁸ to Mr Suleymanov, defending Mr Drzemczewski and Mr Schirmer as members of the PACE secretariat and arguing that such attacks against them were unacceptable. Moreover, Mr McNamara stressed that he had been contacted by the Azerbaijani lobbyists offering him a trip and hospitality in Azerbaijan, and that he had seen those same lobbyists in the foyer of the Palais de l'Europe (PACE building) on the day of the vote on the Strässer report, lobbying for the adoption of Amendment 2.

257. In his oral evidence to the Investigation Body, Mr McNamara explained that when he had first become a member of the Assembly in 2011, the then head of the Irish delegation had invited him for a lunch in the Palais dining room with Mr Goris. Mr Goris had stressed that Azerbaijan was a country that was outward looking and that wanted to engage more with the world, and that sometimes there was criticism of it, some of which was unwarranted. Mr Goris had suggested that they should go there and see Azerbaijan for themselves, and that they would be provided with business-class tickets. He said that there might be a stopover in Istanbul, and if there was, it would be in a nice hotel, and that there were many nice hotels also in Azerbaijan. Mr Goris had insisted that it would be an interesting opportunity to see Azerbaijan and, perhaps, to dispel unfounded criticisms. However, when Mr McNamara had started asking about the issue of political prisoners in Azerbaijan, Mr Goris had ended the discussion and had never contacted him again. For his part, Mr Goris explained that he had not lobbied Mr McNamara but had simply wanted to advise him to discover Azerbaijan before he started to talk on issues related to that country.²⁶⁹

258. In the context of Mr Suleymanov's email, members of the PACE secretariat also gave evidence to the Investigation Body, according to which Mr Sawicki, Mr Drzemczewski and Mr Schirmer had discussed with the then President of PACE, Mr Mignon, whether Amendment 2 should not even be put to the vote.²⁷⁰ They had considered that the amendment undermined the very essence of the report and the work of the Assembly by relinquishing all powers to the ECtHR concerning the issue of political prisoners. As such, under the relevant PACE rules, the amendment could be declared inadmissible by the President of PACE. Shortly before the report was put to the vote in the plenary, Mr Mignon had decided to put the amendment to the vote. According to information obtained by the PACE secretariat, this change in position by Mr Mignon had been the result of pressure put on him by the Turkish, Azerbaijani and Spanish delegations. The Investigation Body also heard conflicting statements concerning the extent of the PACE secretariat staff's involvement in the context of the vote on the Strässer report.

²⁶⁸ The email is available to the Investigation Body.

²⁶⁹ Stef Goris' oral evidence (23 January 2018).

²⁷⁰ Documentary evidence provided by the members of the PACE secretariat shows that information was communicated to the Committee that the then President of PACE Mr Mignon might declare Amendment 2 to be out of order. However, it was decided to have the Committee's opinion on the Amendment in case the President would change his mind. The Amendment was adopted in the Committee with a very narrow majority.

(b) Report on the follow-up to the issue of political prisoners in Azerbaijan

(i) The vote on the report in the PACE plenary

259. The report entitled “The follow-up to the issue of political prisoners in Azerbaijan” was put to a vote during the Assembly’s plenary session in January 2013, together with the report by the co-rapporteurs in the Monitoring Committee, Mr Agramunt and Mr Debono Grech (see paragraphs 103-104 above).²⁷¹

260. Following a heated debate in a packed plenary session on 23 January 2013,²⁷² Mr Strässer’s report was rejected by 125 votes against it, 79 votes in favour and 20 abstentions.²⁷³ All members of the Azerbaijani delegation present voted against the report.

261. At the same time, the report by Mr Agramunt and Mr Debono Grech was adopted by 196 votes in favour, 13 against and 16 abstentions.²⁷⁴ Two members of the Azerbaijani delegation voted in favour of that report²⁷⁵ and four other members abstained.²⁷⁶

(ii) Other facts established and allegations heard by the Investigation Body

262. When heard by the Investigation Body, Mr Strässer stated that as early as 2010 or 2011 Mr Seyidov had told him that he was certain that Mr Strässer’s report would not go through. Moreover, the manner in which his report on the definition of political prisoners had been adopted and the fact that he had had a majority in the Committee on Legal Affairs and Human Rights, led Mr Strässer to believe that there had been some sinister motives that had led to the change in attitude and the rejection of the substantive part of his report in the PACE plenary.

263. Other witnesses also gave evidence of the fervent activity of the Azerbaijani delegation to undermine the Strässer report. Mr McNamara stated that they had been overtly liaising very carefully with Mr Goris and there had been a move to get people into the plenary, into the hemicycle to vote, and to vote a particular way.²⁷⁷ On the other hand, the Investigation Body heard evidence that there were also MPs who were coming to Strasbourg only to vote for the Strässer report.²⁷⁸

264. Mr Strässer and members of the PACE secretariat informed the Investigation Body that they regarded the Spanish delegation as the primary opponents of the Strässer report.²⁷⁹ One possible explanation for such an approach was said to be their sensitivity to the issue of ETA prisoners. On the other hand, a former PACE secretariat member alleged that he had been recently approached by a former Spanish MP in PACE who had stated that the Spanish Government had asked the Spanish delegation in PACE to vote in favour of Azerbaijan, as Azerbaijan had helped Spain in writing off a

²⁷¹ Report (Doc. 13084): The honouring of obligations and commitments by Azerbaijan (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19243&lang=en>, last accessed on 15 February 2018).

²⁷² See further the ESI report “Azerbaijan Debacle: The PACE Debate on 23 January 2013”.

²⁷³ Further details on the voting are available at <http://assembly.coe.int/nw/xml/Votes/DB-VotesResults-EN.asp?VoteID=34435&DocID=14409&MemberID> (last accessed on 15 February 2018).

²⁷⁴ Further details on the voting are available at <http://assembly.coe.int/nw/xml/Votes/DB-VotesResults-EN.asp?VoteID=34428&DocID=14418> (last accessed on 15 February 2018).

²⁷⁵ Mr Rafael Huseynov (ALDE) and Rovshan Rzayev (EPP).

²⁷⁶ Mr Ali Huseynli, Mr Samad Seyidov, Ms Sevinj Fataliyeva and Ms Sahiba Gafarova (all EDG).

²⁷⁷ Michael McNamara’s oral evidence (11 October 2017).

²⁷⁸ Frank Schwabe’s oral evidence (12 October 2017).

²⁷⁹ The majority of Spanish MPs in PACE voted against the Strässer report. Only one of them voted in favour and one abstained.

debt of EUR 500 million. Mr Arif Mammadov, the former Azerbaijani Ambassador to the COE, explained to the Investigation Body that he had never heard of the existence of any economic links between Azerbaijan and Spain; nor was Spain seen as a geopolitical ally of Azerbaijan.²⁸⁰

265. Certain MPs and PACE staff members considered Mr Agramunt to be the leader of the opposition to the Strässer report. Mr Strässer considered that Mr Suleymanov had been the key figure in this respect. The Investigation Body also heard evidence from members of the PACE secretariat that the Bureau of the Assembly had supported the report of Mr Agramunt and Mr Debono Grech, and Mr Strässer's report had not been considered to be needed as the former report had already addressed the issue of political prisoners in Azerbaijan.

266. For Mr Strässer, it was unclear why he and the two co-rapporteurs in the Monitoring Committee had worked on the same issue.²⁸¹ This was also unclear for some PACE secretariat members, although some of them referred to the different roles of the Monitoring Committee and the Committee on Legal Affairs and Human Rights. A senior staff member from the Monitoring Committee considered that the report of Mr Agramunt and Mr Debono Grech was also critical on the issue of political prisoners in Azerbaijan but more balanced than the Strässer report. Other PACE staff members considered that the report of Mr Agramunt and Mr Debono Grech was not sufficiently critical and had therefore been acceptable to the Azerbaijani delegation.

267. Members of civil society in Azerbaijan were convinced that money had played a role in the preparation and adoption of the Agramunt/Debono Grech report. They suggested that the Spanish prosecuting authorities should look into the matter and determine whether Mr Agramunt had received any money for his work on the Azerbaijani file. However, they had no hard evidence that money had changed hands. For his part, Mr Debono Grech explained that he had not agreed with the Strässer report as he had not been satisfied with the definition of political prisoners which Mr Strässer had used. In Mr Debono Grech's view, there were many persons who had committed crimes in Azerbaijan, joined a political party and then argued that they were political prisoners.²⁸² The Investigation Body did not have an opportunity to hear evidence from Mr Agramunt on this matter.

268. Other MPs cited different reasons for not voting for the Strässer report. For instance, Mr Walter stated that his main objection to Mr Strässer's report was not specifically about Azerbaijan but about the fact that it did not contain any empirical evidence. Because Mr Strässer had not been allowed into Azerbaijan, he had merely recounted what he had read in other documents from NGOs about the situation of political prisoners in Azerbaijan.²⁸³

269. Similarly, Mr Xuclà rejected the idea of any conspiracy behind the rejection of the Strässer report. He argued that it was simply a situation where different political parties had different positions concerning the same matter. In his view, the Strässer report was simply a reproduced report of different NGOs and it was inherently inaccurate. This was the reason why it had been rejected in the PACE plenary.²⁸⁴

270. Mr Goris²⁸⁵ and Mr Mariani also placed emphasis on the political struggle in the vote on the Strässer report. Mr Mariani argued that the Agramunt/Debono Grech report was supported by the EPP and that the Strässer report was essentially the report of an NGO. Mr Mariani had simply

²⁸⁰ Arif Mammadov's oral evidence (10 October 2017).

²⁸¹ Christoph Strässer's oral evidence (10 October 2017).

²⁸² Joseph Debono Grech's oral evidence (13 October 2017).

²⁸³ Robert Walter's oral evidence (7 November 2017).

²⁸⁴ Jordi Xuclà's oral evidence (12 December 2017).

²⁸⁵ Stef Goris' oral evidence (23 January 2018).

decided to follow the line of his political group (EPP) when voting on the Strässer report.²⁸⁶ Evidence to the same effect was provided by Mr Seyidov, who argued that the defeat of the Strässer report had been the result of a political struggle which he had won. He explained that when referring to “his Council of Europe” during the debate on the Strässer report, he had wanted to say that he had come to PACE to defend the COE values and that Mr Strässer had only wanted to defame his country.²⁸⁷

5. Relevant circumstances following the defeat of the Strässer report

271. Following the defeat of the Strässer report in the PACE plenary (see paragraph 260 above), a group of MPs put forward a motion for a resolution with a view to ensuring the “monitoring [of] political prisoners in all Council of Europe member States”. The motion in question was proposed by Mr Volontè.²⁸⁸ This was seen by some members of the PACE secretariat heard by the Investigation Body as a search for a “good” definition of political prisoners in favour of Azerbaijan. Mr Volontè’s own attempts to withdraw the motion at a later stage were unsuccessful (see paragraph 279 below). Nevertheless, the motion in question did not give rise to further developments on the issue of political prisoners.

6. Involvement of Mr Luca Volontè in the Strässer affair

(a) The facts established by the Investigation Body

272. Mr Luca Giuseppe Volontè is an Italian politician. His last known affiliation was with the UDC (*Unione dei Democratici Cristiani e Democratici di Centro*), a relatively small centrist Christian Democrat political party. He was first elected as a member of the Italian Lower House of Parliament (*Camera dei Deputati*) in 1996 and served for five terms. From 2008 to 2013, during his last period in office, he was a member of the Italian delegation to PACE. Until 27 June 2013, Mr Volontè was president of the EPP group within PACE.²⁸⁹

273. Mr Volontè came to wider public notice following the publication of the 2016 ESI report on caviar diplomacy (see paragraphs 23-27 above). This report relied on information obtained in the context of a pending criminal investigation in Italy in respect of Mr Volontè on suspicion of corruption and money laundering. The Investigation Body has obtained the relevant criminal case files from the Italian authorities and heard oral evidence from the prosecutors in charge of the case. The Investigation Body thereby managed to confirm independently the existence of evidence on which the ESI report relied. In addition, it has heard other witness evidence concerning Mr Volontè’s involvement in the Strässer affair.

274. A number of witnesses heard by the Investigation Body, both MPs and PACE secretariat members, did not consider Mr Volontè to be particularly active concerning the Strässer report. In fact, some pointed to the fact that he had voted against Amendment 2 to the report on the

²⁸⁶ Thierry Mariani’s oral evidence (22 January 2018).

²⁸⁷ Samad Seyidov’s oral evidence (22 January 2018).

²⁸⁸ Motion for a resolution (Doc. 13128): Monitoring political prisoners in all Council of Europe member States, 31 January 2013 (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19490&lang=en>, last accessed on 15 February 2018).

²⁸⁹ See further Mr Volontè’s PACE member file (available at <http://assembly.coe.int/nw/xml/AssemblyList/MP-Details-EN.asp?MemberID=6400>, last accessed on 15 February 2018).

definition of political prisoners.²⁹⁰ However, eventually he voted against both the first (definition) and the second (substantive) parts of the Strässer report.²⁹¹

275. Mr Xuclà, who was mentioned in the exchange of emails between Mr Volontè and Mr Suleymanov and Mr Muslum Mammadov (see paragraph 279 below), denied ever having been contacted by Mr Volontè concerning the Strässer report.²⁹² Similarly, Mr Fischer, who had also been mentioned in the emails (see paragraph 279 below), stated that he could not remember having participated in any dinner organised by Mr Volontè, but that it had in any event made no sense to invite him for dinner as he had always participated in party dinners. He also denied that any pressure had been put on him in the political group (EPP) to vote in a particular way.²⁹³

276. However, according to Mr Strässer, Mr Volontè had been clear that he was against the Strässer report and that the EPP group, which he had chaired at the time, would also be against the report. In this respect, he had not accepted any opposition.²⁹⁴ Mr Walter had also regarded Mr Volontè as working to undermine the Strässer report.²⁹⁵

277. Mr Arieu explained to the Investigation Body that at the time when the Strässer report had been discussed, he had recently joined PACE²⁹⁶. He had been lobbied by Mr Suleymanov to vote against the report in exchange for Azerbaijani support for Ukraine. Mr Volontè had also approached Mr Arieu and recommended that he vote against the Strässer report. At the same time, at the EPP group meeting, a recommendation had been made to vote for the other report of Mr Agramunt and Mr Debono Grech. After the group meeting, Mr Arieu had approached Mr Volontè to ask him to explain the position of the group. Mr Volontè had then said that it would be better to vote against the Strässer report and to vote for the other report. However, the witness had considered that the Strässer report had reflected on some important matters and that the other report had been less objective, so he had decided to abstain on the Strässer report.²⁹⁷

278. The documentary evidence available from the Italian criminal case file confirms the accuracy of the ESI report on the email exchanges between Mr Volontè and Mr Suleymanov and Mr Muslum Mammadov at the time of the vote on the Strässer report. It also shows that payments of a significant amount of money were made to Mr Volontè through several UK-based companies that were found to be shell companies (see paragraph 48 above).

279. The following facts were found to be established by the Investigation Body:

- On 21 November 2011 Mr Suleymanov sent an email to Mr Volontè with documents relating to the Strässer report in order for Mr Volontè to “understand the current situation in detail”;

²⁹⁰ See further: <http://assembly.coe.int/nw/xml/Votes/DB-VotesResults-EN.asp?VoteID=34331&DocID=14306&MemberID> (last accessed on 15 February 2018).

²⁹¹ See further <http://assembly.coe.int/nw/xml/Votes/DB-VotesResults-EN.asp?VoteID=34332&DocID=14306> <http://assembly.coe.int/nw/xml/Votes/DB-VotesResults-EN.asp?VoteID=34435&DocID=14409&MemberID> (last accessed on 15 February 2018).

²⁹² Jordi Xuclà’s oral evidence (12 December 2017).

²⁹³ Axel Fischer’s oral evidence (22 January 2018).

²⁹⁴ Christoph Strässer’s oral evidence (10 October 2017).

²⁹⁵ Robert Walter’s oral evidence (7 November 2017).

²⁹⁶ The Investigation Body has heard evidence suggesting that some PACE members lacked political experience which made them susceptible to pressure and other forms of improper influence (Michael McNamara’s oral evidence (11 October 2017); Frank Schwabe’s oral evidence (12 October 2017); Stefan Schennach’s oral evidence (24 January 2018); oral evidence of a several PACE secretariat staff).

²⁹⁷ Volodymyr Arieu’s oral evidence (12 December 2017).

- On 30 May 2012 Mr Volontè sent an email to Mr Gregor Puppincx of the European Centre for Law and Justice, stating that some friends from Azerbaijan needed a study on the definition of “political prisoners”. He believed that there was no common definition of “political prisoners” among international bodies and that the Legal Committee of PACE should address the issue. In his email, Mr Volontè included Mr Muslum Mammadov’s phone numbers;
- On 19 June 2012 Mr Mammadov forwarded an email to Mr Volontè with two attached reports: “La définition des prisonniers politiques” and “Suivi de la question des prisonniers politiques en Azerbaïdjan”. Both were stamped “diffusion restreinte”. The forwarded email had been sent by Mr Goris to Mr Mammadov and Mr Suleymanov.²⁹⁸ In his message to Mr Volontè, Mr Mammadov stated: “thank you for your letter to EPP. This is great! Of course, I keep it confidential”;
- On 24 November 2012 Mr Volontè sent an email labelled “Reserved” to Mr Agramunt, asking him to convince Mr Debono Grech to raise the issue of political prisoners in the Monitoring Committee meeting in order to show a clear division in the Socialist Group. In his message, Mr Volontè also stated that a member of the PACE secretariat with whom he had travelled to Brussels the day before had seemed to be worrying about Mr Agramunt’s decision to include a “large chapter” on political prisoners in his report on Azerbaijan;
- On 15 December 2012 Mr Volontè sent an email to Mr Mammadov reporting on the latest Monitoring Committee meeting, which had been held in Paris. He complained about the fact that not many members of the EPP had been present and stated that Mr Debono Grech had not been very useful. He also stated that they should “appoint many friends” during the joint debate and asked Mr Mammadov to suggest the appointment of Mr Vitali and a former Greek minister for the EPP, Mr Iwiński and others for the Socialists group, Mr Hancock and “Bob” (presumably Mr Walter) for the conservative group, Mr Xuclà and others for ALDE. In the event of a free vote, Mr Mammadov should suggest that these MPs voice their support for the Agramunt report and their disagreement with the Strässer report. Mr Volontè concluded his message by asking Mr Mammadov to “suggest [to them] to be present not only to approve Pedro and reject Strasser” but also to approve his own amendment on an issue concerning Bulgaria;
- On 12 January 2013 Mr Volontè sent another email to Mr Mammadov, alerting him to the fact that someone had organised a public hearing on the issue of political prisoners in Azerbaijan to be held soon. He also told Mr Mammadov that he had learned that some French or German MPs would open a discussion about the “Hortser-Suleymanov letter” during the “Bureau EPP Dinner” which was scheduled for an upcoming evening. He then asked whether Mr Mammadov could arrange for Mr Fischer to replace Mr Hortser at the “Bureau EPP dinner”. He finally explained that he had spoken to Mr Gross the day before and that the latter had understood “very well” his opinion on the inconsistencies between the Agramunt and the Strässer reports but would support Mr Strässer for

²⁹⁸ The email address used by Mr Goris is the same that he has used in his correspondence with the Investigation Body.

- personal reasons. Mr Volontè concluded his message by saying that he would meet Mr Gross again in a “secret tête-à-tête”;
- On 28 January 2013, Mr Volontè sent an email to Mr Mammadov and Mr Suleymanov proposing alternative flights for his (Mr Volontè’s) trip to Baku on either 12 or 27 February. He concluded his message with the words “I am awaiting your answers”. On the same day Mr Suleymanov replied that there was no problem with those dates but that it should be confirmed with their “friend” Mr Pushkov;
 - On 26 January 2013 Mr Volontè had sent an email, in Italian, to his accountant, Mr Marco Antonini, instructing him to prepare a bill (*fattura giustificativa*) for a payment received at the end of December 2012 with the following justification drafted in English: “consulting NGO sector in Azerbaijan and building up cooperation between NGOs in Azerbaijan and European NGOs on: promotion Human Rights, religion freedom and youth policies”. Another proposed bill, for a payment expected by 31 January 2013, read as follows: “comprehensive study on European and Paneuropean organizations: description, functioning, tools, systems and possible initiatives”. The subject of the email read, in Italian: “urgent from Luca”;
 - On 29 January 2013 Mr Volontè sent an email to Mr Suleymanov, which read: “So you have forgotten me after your victory...!)! Luca”;
 - On 30 January 2013 Mr Suleymanov replied to Mr Volontè’s message of 29 January with the following words: “... I will let you know as soon as I get the answer from my friend. I am sure that I will always surprise with my respect for you. You are my devoted friend for ever ...”;
 - On 1 February 2013 Mr Volontè sent an email to Mr Alfred Sixto of the PACE secretariat, with copy to Mr Sawicki, informing them that he had tabled the wrong motion for a resolution on political prisoners and requesting that, since he had been the first signatory of that motion, they should consider it withdrawn. He offered to send a letter with his original signature the next day. Shortly thereafter he forwarded that email to Mr Mammadov with the following message in English: “Every you[r] desire is an order, therefore I think we should discuss on new version during next meeting in Baku with Elkhan and Pushkov. I will send you answers by both Sawicki and Alfred Sixto”. Later the same day, Mr Volontè forwarded to Mr Mammadov a reply by Mr Sixto informing him that his signature could not be withdrawn. In his message he explained to Mr Mammadov that he could deal with this issue personally at the next meetings of the Presidential Committee and the Bureau.

280. In addition to the above, the available material shows that Mr Volontè carried out other activities in favour of Azerbaijan. In particular:

- On 17 September 2011 Mr Suleymanov sent an email to Mr Volontè informing him that the first plenary meeting of the EURONEST Parliamentary Assembly would be held in Baku, which he considered as a victory. He then thanked Mr Volontè for a letter that the latter had sent to the EPP group of the EP in that context, which he was told had had a “positive influence” during the discussions within the EPP;
- On 29 November 2011 Mr Volontè sent an email to his assistant, Ms Daniela Caliri. The message contained a text entitled *Progetto Azerbaijan*, which outlined a strategy for improving the country’s international image, in particular by opting for a “friendlier and

- more respectful [più cordiale e rispettosa] lobbying activity”.²⁹⁹ The text also stated that the lobbying activity of Mr Lindblad, who had not been much appreciated when he was a member of PACE, was creating problems and was damaging Azerbaijan’s image;
- On 6 February 2012 Mr Volontè sent to Mr Suleymanov an email enclosing the first part of a report entitled “Azerbaijan 2020: SMILE FUTURE”, including more substantial ideas on how to improve Azerbaijan’s image;
 - On 21 August 2012 Mr Volontè sent an email to the Executive Director of the Aliyev Foundation and his assistant, giving them the names of a bishop and a monsignor of the Vatican whom they could contact in order to arrange a possible Azerbaijani cultural event in the context of the “Year of the Faith” celebrations. On 20 November 2012 Mr Volontè wrote to Mr Suleymanov again, complaining about the behaviour towards him of some Azerbaijani officials during that cultural event. Mr Suleymanov apologised the next day, explaining to Mr Volontè that “the leadership” had been informed of his efforts and stating that he understood that words were not sufficient to repair the offence;
 - A Word document entitled “Muslim1.doc”, which was created on 21 November 2012 and was found by the Italian authorities in Mr Volontè’s computer, contained the following statements:

“ ... EUR 100,000 to Foundation Novae Terrae ...

In any event, every monthly salary should be divided in EUR 15,000 in cash (bills of EUR 50/100) and 15,000 on L.G.V. S.r.l. account ... I have not received September and October.”³⁰⁰

- On 8 May 2013 Mr Volontè received an email from Mr Mammadov explaining to him, *inter alia*, that he would ask Mr Goris to prepare a letter on behalf of Mr Agramunt by which he (Mr Agramunt) would explain to the EPP group that he would follow Mr Volontè’s line in the group. This was apparently sent in reply to Mr Volontè’s expression of concern of 6 May 2013 about the candidature and campaigning of Mr Agramunt, presumably for his election to the presidency of the EPP in June 2013. In this email Mr Mammadov also provided details of the company that had made the payment to Mr Volontè. The description of the reasons for payment reads “Construction material and equipment”.

281. The available files also provide material related to the payments made to Mr Volontè. In particular, he had received in total EUR 2,390,000 through a consultancy company called L.G.V. s.r.l., of which he was the managing director and his wife the sole shareholder, as well as through a foundation called Fondazione Novae Terrae, of which he was the legal representative. The money transfers in questions were the following:

- A transfer of EUR 100,000 made to Fondazione Novae Terrae by Metastar Invest LLP through Danske Bank in Estonia. The transfer was received on 17 December 2012 at Banco di Napoli, in Rome;
- A transfer of EUR 222,000 made to L.G.V. s.r.l. from Jetfield Networks Limited Trust Company Complex through Baltikums Bank AS Riga (Latvia). The transfer was received on 27 December 2012 at Banco di Credito Cooperativo of Barlassina (BCC);

²⁹⁹ Translation by the Investigation Body’s secretariat.

³⁰⁰ *Ibid.*

- A transfer of EUR 180,000 made to L.G.V. s.r.l. from LCM Alliance LLP through Danske Bank in Estonia. The transfer was received on 19 March 2013 at BCC;
- Six periodic transfers, each for an amount of EUR 105,000, made to Fondazione Novae Terrae by Polux Management LP, a company incorporated under English law, through Danske Bank in Estonia. The transfers were received as from 10 July 2013 at Banca Popolare Commercio e Industria, Milan;
- Twelve periodic transfers, each for an amount of EUR 105,000, made to Fondazione Novae Terrae by Hilux Services LP, a company incorporated under English law, through Danske Bank in Estonia. The transfers were received between 23 January 2014 and 31 December 2014 at Banca Popolare Commercio e Industria, Milan.

282. In addition to the above payments, during a search of a bank safe rented by Mr Volontè's wife on 19 December 2012, the police found EUR 66,000 in cash, in notes of EUR 50 and 100.

283. The Investigation Body did not have an opportunity to hear evidence from Mr Volontè. The only explanation available concerning the above matters on his part is the one he made in the RAI 3 television report, which was summarised in the 2016 ESI report on "caviar diplomacy" (see paragraph 27 above).

(b) Criminal proceedings against Mr Volontè in Italy

284. On 27 June 2014 the Public Prosecutor's Office in Milan started a criminal investigation against Mr Volontè on suspicion of corruption and money laundering. The investigation commenced after the Italian financial police had been alerted by an Italian bank (BCC) about suspicious money transfers linked to Mr Volontè.

285. On 21 July 2016 Mr Volontè was formally indicted for corruption and money laundering. However, at a hearing on 27 January 2017, the pre-trial investigation judge separated the two charges into two separate sets of proceedings.

286. On the same day, the pre-trial investigation judge dismissed the corruption charges against Mr Volontè, invoking the PACE and domestic parliamentary immunity. However, upon an appeal by the prosecutor, on 6 June 2017 the Supreme Court overturned the pre-trial investigation judge's decision and ordered the continuation of the proceedings.

287. On 13 February 2018 Mr Volontè was acquitted by the first-instance court in Milan on charges of money laundering on the grounds that the relevant facts of money laundering had not been established.

288. The criminal proceedings on the charges of corruption are still pending before the first-instance court in Milan.

C. PACE election observation missions to Azerbaijan

1. Organisation of PACE election observation missions

289. Section A of the Guidelines for the observation of elections by the Parliamentary Assembly (the "Guidelines")³⁰¹ provides as follows: "[f]or the Parliamentary Assembly of the Council of Europe, the observation of elections plays an important role in the assessment of the overall political

³⁰¹ <http://website-pace.net/documents/10643/436801/GuidelinesElectionObservation-EN.pdf/81adc9f1-f750-4336-9a24-952da2f87506> (last accessed on 15 February 2018).

situation of the country in question. In practical terms this entails the systematic observation of elections in any state whose parliament has requested or enjoys special guest status, partner for democracy status, which has applied for membership, or is subject to the monitoring procedure. Observation of parliamentary and presidential elections as well as of referenda in an applicant State or a State under the monitoring procedure should be an inalienable right of the Assembly.”

290. Within the PACE Secretariat, election observations are dealt with by the Election Observation and Interparliamentary Cooperation Division (the “Election Observation Division”), which is composed of two administrators, including the Head of Division, and three administrative assistants. The process of organising and conducting of election observation missions was explained in detail to the Investigation Body by Mr Bogdan Torcătoriu, administrator in the Election Observation Division, in a written statement submitted on 20 October 2017 and during his hearing before the Body on 6 November 2017. Mr Gaël Martin-Micalleff, legal advisor at the Elections Division of the Venice Commission, explained at his hearing on 11 October 2017 the role of the Venice Commission during those missions.

291. The decision to conduct an election observation mission and, possibly, a pre-electoral mission, is decided by the PACE Bureau. The Bureau decides the number of members of the ad hoc committee to observe the elections and the number of members of any pre-electoral mission. The composition of the ad hoc committees is established following the so-called “D’Hondt” method, on the basis of which each political group is allocated a quota of membership in the ad hoc committee proportional to the size of the group. The secretariats of the political groups invite expressions of interest in participating in the mission among the members of each group. The presidents of each group then decide which members, among those who have expressed interest, should represent the group in the ad hoc committee.

292. The composition of the ad hoc committee is finally approved by the Bureau, which also appoints the chairperson. Members of ad hoc committees for the observation of elections must abide by the provisions of the PACE Code of Conduct. All candidates for membership of an ad hoc committee, at the time of putting forward their candidacy must make a written declaration regarding the absence or otherwise of any actual or potential conflict of interest concerning them or members of their families, whether related directly or indirectly and/or with whom they are in regular contact, in connection with the country concerned by an election observation (Section F of the Guidelines).

293. The composition of the secretariat of the ad hoc committee is decided on by the head of the Election Observation Division, then approved by the Director General of the Assembly and finally by the Secretary General of the Assembly.

294. The secretariat of the ad hoc committee is headed by one of the two administrators of the Election Observation Division. For missions in Azerbaijan, it would always be Mr Torcătoriu, as the other administrator, who is also the Head of the Election Observation Division, is an Armenian national.

295. The secretariat is responsible for the practical organisation of the mission. The administrator drafts the programme and organise meetings with other delegations (ODIHR, parliamentary Assembly of the OSCE, European Parliament). He also assists the head of the PACE delegation (ad hoc committee) with the negotiation and drafting of the “draft statement” as well as with any statement or press release. After the mission, he prepares a draft report for the approval of the head of delegation, who may make all the amendments he deems necessary, and circulates it to the other members of the delegation for comments. The head of delegation remains free to include

or not any comments received. The report is approved by the Bureau and then presented to the plenary by the head of the ad hoc committee.

296. The assistants are in charge of travel and accommodation arrangements for the members of the ad hoc committee. They are also in charge of composing two-member observer teams, assigning to each team a particular geographical area and providing each team with drivers and interpreters. Observer teams are free to visit any polling stations of their choice within the assigned geographical area.

297. At the request of PACE, the Venice Commission provides legal assistance to the ad hoc committee during the election observation mission, including during meetings with other delegations. The Venice Commission team is usually composed of one member, assisted by an administrator of the secretariat, and operates under the authority of the ad hoc committee.

298. According to Mr Torcătoriu, the Council of Europe office *in loco* sometimes helped organise meetings with local counterparts during pre-electoral missions, but did not play any role in the context of election observation missions, as that role was normally fulfilled by ODIHR. Ms Filipović, former Head of the Council of Europe Office in Baku, confirmed at her hearing that the office's role in the organisation and conduct of election observation missions was limited. The Head of Office did not participate in any meetings, but attended the press conferences as part of the audience. However, she sometimes assigned her own driver to one of the observer teams.³⁰²

299. Mr Torcătoriu explained the functioning of an election observation mission. Elections took place in most cases on a Sunday. On the Sunday, the delegation was divided into teams of two, observing different polling stations and each team accompanied by a driver and an interpreter. They returned late in the evening or very early on Monday morning. They then filled out a form which had been prepared by ODIHR. All forms went into a box and were used for statistical data by ODIHR. They were not used for any other purposes. On Monday morning, usually at eight o'clock, when all were extremely tired and many parliamentarians had already left, those remaining provided oral or written information, during a meeting, about what they had observed. It was usually a one-hour meeting.

The head of delegation and the administrator of the secretariat (in Azerbaijan, Mr Torcătoriu himself) then attended the meeting of the heads of the International Election Observation Mission (IEOM) delegations in order to finalise the joint statement prepared by ODIHR at the very beginning of the mission and modified following the negotiations that had started on Friday. The final text was translated by ODIHR in the language of the hosting country, and then presented at the press conference. In parallel, there was a one-page press release, which normally included a quote from every head of delegation.

300. Mr Torcătoriu stated that there were no common standards set by ODIHR and that PACE cooperated not only with ODIHR but also with other parliamentary organisations: the Parliamentary Assembly of the OSCE, the European Parliament and, very rarely, the Parliamentary Assembly of NATO.

ODIHR were an expert body and they were normally present on the spot weeks before election day. They usually briefed all the parliamentary delegations during meetings lasting between two and two and a half hours. They provided statistics and information on everything they had observed during the weeks preceding the election day. They also prepared a draft preliminary statement based solely on what they had observed in their weeks of presence there, and that text was then

³⁰² Dragana Filipović's oral evidence (23 January 2018).

discussed by the heads of the parliamentary delegations, in the presence of the ODIHR staff and those who had drafted the text. The negotiations could sometimes last hours or days, depending on the divergence of points of view. The negotiations were held in camera and each head of delegation was accompanied by one, two or three staff members. The head of the PACE delegation was also accompanied by, usually, two representatives of the Venice Commission (one staff and one member). Normally, the outcome of the negotiations was a joint statement which would be published after election day, with the leaders of all the parliamentary delegations and of ODIHR. Once back in Strasbourg, the PACE delegations would present a report to the Assembly. This report was usually prepared by the staff for the attention of the head of delegation who was able to accept it or to change it in whole or in part.

In most cases, this was done under intense time pressure, sometimes in only two days. The report had to be presented during a session of the Assembly or the Standing Committee of the Assembly. The text would be sent to the head of delegation for comments and approval. Then, it would be sent to all the members of the delegation for comments. Mr Torcătoriu stressed that the head of delegation may or may not take into consideration comments made by the members.

It had happened that a common statement of all observing delegations had not been possible, in particular in Azerbaijan. It had also happened that there would be separate press conferences where some heads of delegation would express different views.

As far as Azerbaijan was concerned, very often, the text prepared by ODIHR was very often critical. The head of the PACE delegation, with the support of the majority of the members of the delegation, often tried – and sometimes succeeded – to water down the text, which was the result of a compromise.

As to the practical arrangements on election day, the witness explained that ODIHR usually provided a list of polling stations, which the secretariat distributed to the PACE teams. The witness, who was in charge of the organisation, would not identify particular polling stations unless NGOs had alerted him to problems that had arisen in particular polling stations. The teams were free to observe as many polling stations as they wished in the respective areas where they were deployed.

2. Issues arising in the context of election observation missions in Azerbaijan

301. Since Azerbaijan joined the Council of Europe in 2001, and in the context of its monitoring procedure, PACE has observed the following elections and referenda:

- The presidential election of 15 October 2003;
- The parliamentary elections of 6 November 2005;
- The parliamentary re-run of 13 May 2006;
- The presidential election of 15 October 2008;
- Presence during the constitutional referendum of 18 March 2009;
- The parliamentary elections of 7 November 2010;
- The presidential election of 9 October 2013;
- The parliamentary elections of 1 November 2015;
- The constitutional referendum of 26 September 2016;
- The repeat of the parliamentary elections in constituency No. 90 in Azerbaijan on 18 June 2016;
- The constitutional referendum of 26 September 2016.

302. In the light of the reports submitted by various NGOs and other available evidence, the Investigation Body focused in particular on the PACE mission deployed for the observation of the following elections and referenda:

- The presidential election of 15 October 2008;
- The parliamentary elections of 7 November 2010;
- The presidential election of 9 October 2013;
- The parliamentary elections of 1 November 2015;
- The repeat of the parliamentary elections in constituency No. 90 in Azerbaijan: 18 June 2016;
- The constitutional referendum of 26 September 2016.

(a) Presidential election of 15 October 2008

303. The presidential election of 2008 was the first election in respect of which allegations of suspect behaviour by members of the PACE election observation mission in favour of Azerbaijan had been made (see paragraph 11 above). The circumstances surrounding these allegations can be summarised as follows.

304. On 23 June 2008 the Bureau decided to set-up an ad hoc committee composed of thirty members. It also authorised a pre-electoral mission consisting of five members – one from each political group, who were also members of the ad hoc committee – on the understanding that it should take place approximately one month ahead of the elections. On 10 July the Bureau approved the composition of the ad hoc committee for the observation of the election, as well as that of the pre-electoral mission, and appointed Mr Herkel as chairman.

305. The pre-electoral mission visited Baku on 16-18 September 2008.

306. The ad hoc committee acted as part of an IEOM that also included a delegation from the European Parliament and the OSCE/ODIHR observation mission. It carried out its mission on 13-15 October 2008.

ODIHR had deployed their election observation mission to Azerbaijan on 1 September 2008. The mission was composed of a core team of twelve staff, twenty-eight long-term observers and 450 short-term observers.³⁰³

A joint statement was presented by the heads of the three delegations constituting the IEOM at a press conference held on 16 October 2010.

307. When the PACE delegation arrived in Baku, before election day, it appeared that there were already strongly polarised views among some of its members, which, according to several witnesses heard by the Investigation Body, reflected a latent conflict within PACE between MPs who were in favour of Azerbaijan and others who were against it.

308. According to Mr Wille,³⁰⁴ the polarisation within the ad hoc committee was due to the fact that before election day, ODIHR had already produced a statement indicating that the elections had not been free and fair. Tensions had also existed in the delegation of the OSCE Parliamentary Assembly. Mr Wille explained that the PACE delegation had agreed with ODIHR on a joint statement, but that Mr Herkel and the head of the ODIHR delegation, Mr Boris Frlec, had then spoken to the media and had departed from the joint statement.

³⁰³ [Presidential Election, 15 October 2008 | OSCE](#) (last accessed on 15 February 2018).

³⁰⁴ Paul Wille's oral evidence (11 October 2017).

309. Mr Herkel³⁰⁵ confirmed that it had been extremely difficult to agree on a common position within the PACE delegation and recalled that the press conference had had to be postponed for three hours. Some members of the delegation had made an attempt to take a much softer approach than the one he had proposed. These were Mr Hancock, Mr Slutsky, Mr Walter, Mr Lintner, Mr Çavuşoğlu, Mr Wille and Ms Ojuland. The most vocal members who had criticised the witness within the delegation were Mr Hancock, Mr Lintner and Mr Wille. Their argument was that they had not seen anything wrong happening in the polling stations on election day, and therefore they could not endorse the criticism that ODIHR had expressed based on its long-term approach to the monitoring of the electoral process as a whole. According to Mr Herkel, the members of the PACE delegation nevertheless managed to agree on a compromise statement. However, during the press conference, Mr Hancock and Mr Wille had protested when Mr Herkel had declared that the election had been “a very good swimming exercise, but unfortunately, [in] an empty pool”.

310. Before the Investigation Body, Mr Walter, who had been a member of the PACE delegation, also recalled that there had been a disagreement between Mr Herkel and the representatives of ODIHR on the one side and Mr Wille, Mr Hancock and Mr Lintner on the other side.

311. On 8 December 2008, the Bureau of PACE approved the report on the observation of the 2008 Presidential election³⁰⁶ presented by the rapporteur, Mr Herkel. The report expressed some criticism, notably with regard to the media environment, but concluded that there had not been serious irregularities during election day. It pointed out that there had been some “frictions” with ODIHR.

(b) Parliamentary elections of 7 November 2010

312. On 21 June 2010 the Bureau decided to set-up an ad hoc committee composed of thirty members to observe these elections and authorised a pre-electoral mission consisting of five members. On 25 June the Bureau approved the composition of the ad hoc committee and appointed Mr Wille (ALDE) as chairman.

313. The pre-electoral mission visited Baku on 19-22 October 2010.

314. The ad hoc committee conducted its observation mission on 5-7 November 2010, again as part of an IEOM that also included delegations from the Parliamentary Assembly of the OSCE and from the European Parliament as well as from the OSCE/ODIHR observation mission. On election day, the committee was split into sixteen teams and observed elections in and around Baku, Sumgait and Sheki.

315. ODIHR had deployed their election observation mission in Azerbaijan on 19 September 2010. The mission was composed of a core team of sixteen staff, twenty-two long-term observers and 405 short-term observers.³⁰⁷ Ms Glover was the head of mission.

316. A joint statement was presented by the heads of the delegations at a press conference held on 8 November 2010.³⁰⁸

³⁰⁵ Andres Herkel’s oral evidence (23 October 2017).

³⁰⁶ <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnNvdG1sL1hSZWYvWDJlLURXLWV4dHluYXNwP2ZpbGVpZD0xMjl4NSZsYW5nPUVO&xsl=aHR0cDovL3NlbnRfWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJZj1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTEyMjg1> (last accessed on 15 February 2018).

³⁰⁷ [Parliamentary Elections, 7 November 2010 | OSCE](#) (last accessed on 15 February 2018).

³⁰⁸ <http://www.osce.org/odihr/elections/73524?download=true> (last accessed on 15 February 2018).

317. As stated in the ESI report (see paragraph 14 above), it appears that these elections were marked by strong disagreements between the PACE delegation and the ODIHR mission.

318. According to Mr Wille,³⁰⁹ ODIHR had produced a statement ahead of election day, which was an approach that he did not favour as a matter of principle. Following the elections, and after rather tense negotiations, a joint statement was adopted by the various delegations composing the IEOM. Mr Wille recalled that after an agreement had been reached, Ms Glover had made statements to the media which were not consistent with the joint statement. That was the reason why she had been publicly criticised by the head of the delegation of the OSCE Parliamentary Assembly, Mr Grossruck. Mr Wille described Ms Glover's behaviour as "aggressive" and considered that ODIHR had a bias against Azerbaijan and, in general, against eastern European countries.

319. The fact that the 2010 election observation mission had been marked by strong disagreements between the PACE delegation and ODIHR was confirmed in their oral statements by Mr Debono Grech and Ms Brasseur.

320. According to Ms Brasseur,³¹⁰ the 2010 election observation mission was the first occasion when she had sensed a change of attitude towards Azerbaijan within PACE. During that mission, she had seen several observers attending in their private capacity and later she had learned that they belonged to an organisation paid by Azerbaijan to observe the elections. Those observers seemed to have rather close relations with some unspecified members of the PACE delegation. On the election day, Ms Brasseur had not noticed any fraud. However, she believed that the electoral process had to be assessed as a whole, following the ODIHR long-term approach.

321. In her written statements submitted to the Investigation Body on 11 November 2017 and 5 January 2018, Ms Strenz confirmed that she had been present in Azerbaijan during the 2010 parliamentary elections. However, although she had already been a member of PACE at that time, she had not been part of the PACE delegation but part of a mission organised by Mr Lintner. Ms Strenz recalled having met Mr Lintner for the first time in January of the same year. The latter had asked her and other members of PACE whether they would be interested in taking part in election observation missions in Azerbaijan. Ms Strenz did not know who had paid for her travel and accommodation expenses and denied having received any fee for her participation in that mission. She did not know whether Mr Lintner had been acting as a lobbyist for Azerbaijan.

322. From PACE documentary evidence examined by the Investigation Body, it appears that, on 11 November 2010, Mr Wille reported orally to the Bureau that the elections had been peaceful and that all opposition parties had participated in the campaign. However, a number of shortcomings had been observed, to the point that the elections could not be said to have signified any meaningful progress in the democratic development of the country. He also stated that while cooperation with the OSCE Parliamentary Assembly and the European Parliament had run smoothly, that with the ODIHR had been very problematic. ODIHR had constantly questioned the competence, seriousness and even the personal honesty of members of the parliamentary delegations. ODIHR had persistently tried to impose its own views on others and seemed to have settled in advance on an entirely negative attitude to the whole conduct and outcome of the election. ODIHR participants were often young and seemed highly inexperienced. At one stage, it had looked as if the various parties would be unable to agree on a common statement, but in the end a compromise wording had been found. In conclusion Mr Wille suggested that the Bureau of the Assembly and its President

³⁰⁹ Paul Wille's oral evidence (11 October 2017).

³¹⁰ Anne Brasseur's oral evidence (11 October 2017).

should undertake a fundamental modification of the Assembly's 1997 agreement on cooperation with ODIHR, in order to permit serious and constructive work to be done during election observations.

323. Several members of the Bureau expressed support for Mr Wille's views. Others, including Mr Gross and Mr Herkel, considered that long-term observation missions allowed for a better understanding of the electoral process as a whole.

324. There was a general acknowledgment of the role of the particular expertise of ODIHR but also criticism of ODIHR's attitude towards the PACE and other parliamentary delegations during the observation mission.

325. In conclusion, the Bureau took note of the oral report presented by Mr Wille and of the press release on the election observation mission, and appointed Mr Iwiński to replace Mr Wille, who had in the meantime ceased to be a member of PACE.

326. The report by the ad hoc committee was delivered by its new rapporteur, Mr Iwiński, on 24 January 2011.³¹¹ Although it welcomed a slight progress in some areas, such as an increase in the share of female candidates compared with previous elections, the report was rather critical of the electoral process, including on election day, where, for instance, international observers had assessed the vote count negatively in 31% of the counts observed. The report pointed out that relations with the parliamentary partners had been normal, though not always easy, but that the ad hoc committee had however experienced "serious frictions and nearly insurmountable difficulties in its interplay with ODIHR".

(c) Presidential election of 9 October 2013

327. As highlighted in the 2013 ESI report (see paragraphs 20-22 above), the presidential election of 9 October 2013 saw an even deeper divide between the PACE delegation and the ODIHR mission. For some staff members of the PACE secretariat heard by the Investigation Body, that election had marked the beginning of the most problematic PACE observation missions.

Mr Knaus, on behalf of ESI, explained that his organisation had decided to produce a critical report on the 2013 election because the results of the election observation missions had been shocking in the sense that all of the forty-one observation missions, except that of ODIHR, which had remained in place for much longer and based its work on a thorough methodology, "had found no particular problem".³¹²

Ms Stefanie Schiffer, representative of the NGO European Platform for Democratic Elections (EPDE), stated that it was on the occasion of the 2013 election that her organisation had come to the conclusion that PACE election observation missions in Azerbaijan had to be investigated.³¹³

328. The chronology of the 2013 election observation mission may be summarised as follows.

329. On 30 May 2013 the PACE Bureau decided to observe the presidential election in Azerbaijan on 9 October 2013, to constitute an ad hoc committee for this purpose composed of thirty members as well as of the two co-rapporteurs of the Monitoring Committee, Mr Agramunt and Mr Debono

³¹¹ <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnRveG1sL1hSZWYvWDJlURXLWV4dHIuYXNwP2ZpbGVpZD0xMzA4NiZsYW5nPUVO&xsl=aHR0cDovL3NiYWVudGlicGFjZS5uZXQvWHRsdC9QZGYvWFJlZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTEzMDg2>
(last accessed on 15 February 2018).

³¹² Gerald Knaus' oral evidence (6 September 2017).

³¹³ Stefanie Schiffer's oral evidence (7 September 2017).

Grech, *ex officio*, and to authorise a pre-electoral mission composed of seven members (one from each political group and the two co-rapporteurs of the Monitoring Committee).

330. On 28 June 2013 the Bureau approved the composition of the ad hoc committee and appointed Mr Walter as chair. After a series of changes, the Bureau approved the definitive list of the ad hoc committee on 30 September 2013.

331. The pre-electoral mission visited Baku on 11-12 September 2013.

332. At a Bureau meeting held in Strasbourg on 30 September 2013, Mr Walter reported that the delegation had been disappointed by the fact that many recommendations made in the Assembly's reports had not been implemented and many concerns remained on the grounds of freedom of expression, assembly and association and the functioning of pluralist democracy. Mr Walter further underlined that "the function of the Assembly's mission was not to duplicate the work of the long-term observers of ODIHR or that of the Monitoring Committee. The ad hoc committee would concentrate on how this election was conducted on the Election Day, and would be objective in its assessment of as many polling stations as possible in the country".

333. The ad hoc committee conducted its observation mission on 7-10 October 2013. On election day, the PACE delegation split into eighteen teams, which observed the opening, voting and closing as well as the vote count and tabulation in and around Baku, Qaradaq, Yasamal, Khatai, Nizami, Sabunchu, Sumgayit, Suraxani, Quba, Ismayilli and Gadabay.

334. In the meantime, ODIHR had deployed their election observation mission on 28 August 2013. The mission was composed of a core team of thirteen staff, headed by Ms Tana de Zulueta (Italy), thirty long-term observers and 280 short-term observers.³¹⁴ Mr Voisin had been appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the short-term OSCE observer mission. A delegation from the European Parliament, headed by Mr Arlacchi, and the OSCE-PA, headed by Ms Doris Barnett (Germany), were also present on election day.

335. On 10 October 2013 two separate statements were delivered during two different press conferences, one by the PACE delegation and the European Parliament delegation,³¹⁵ and the other by ODIHR together with the OSCE-PA delegation.³¹⁶

336. The absence of a joint statement, which had been the norm during previous election observation missions in Azerbaijan, was the result of a fundamental difference of approach between the two sides and prompted allegations of lack of impartiality against some members of the PACE and EP delegations. Those allegations were made in parallel with allegations against other observation missions which had been accredited for the presidential election but were not affiliated to the IEOM.

(i) The different approaches of ODIHR/OSCE-PA and the PACE and EP delegations

337. It clearly emerged from the various material examined by the Investigation Body that two divergent approaches to the assessment of the electoral process were followed by ODIHR, on one hand, and the PACE and EP delegations, on the other.

³¹⁴ [Presidential Election, 9 October 2013 | OSCE](#) (last accessed on 15 February 2018).

³¹⁵ Appendix 6 to the ad hoc committee report: <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbnQvbnNvZG1sL1hSZWYvWDJlLURXLWV4dHl1uYXNwP2ZpbGVpZD0yMDI1OSZsYW5nPUVO&xsl=aHR0cDovL3NlbnRlbnR1bWVudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTlwMjU5> (last accessed on 15 February 2018).

³¹⁶ <https://www.oscepa.org/documents/all-documents/election-observation/election-observation-statements/azerbaijan/statements-3/1854-2013-presidential-2/file> (last accessed on 15 February 2018).

338. ODIHR used an essentially technical approach and was not concerned with the political implications of its critical stand. As explained by Mr Harald Jepsen,³¹⁷ an independent election observation consultant often engaged by ODIHR, including as deputy head of the 2013 observation mission, “the ODIHR’s methodology might be over-technical but has been constantly refined over the years and does certainly not take into account any geopolitical considerations”.

According to ODIHR’s website, their methodology is based on the premise that an election is more than a one-day event, and covers all the elements necessary for a democratic electoral process. It therefore takes account of the situation before, during, and after an election. Instead of merely concentrating on election day events witnessed in polling stations, including violations such as ballot-box stuffing and voter intimidation, missions consider the pre-election environment, looking out for violations such as administrative constraints and disregard for fundamental civil and political rights. A typical election observation mission comprises around twelve core team members, as well as several dozen long-term observers and several hundred short-term observers. A detailed description of the ODIHR methodology may be found in their Election Observation Handbook.³¹⁸

339. In the context of the 2013 presidential election, ODIHR issued a very critical report³¹⁹ which echoed its statement issued jointly with the OSCE-PA delegation on 10 October 2013. The report concluded that the election had been undermined by limitations on freedoms of expression, assembly and association that did not guarantee a level playing field for candidates; that continued allegations of candidate and voter intimidation and a restrictive media environment had marred the campaign; and that significant problems had been observed throughout all stages of election day processes and had underscored the serious nature of the shortcomings that needed to be addressed in order for Azerbaijan fully to meet its OSCE commitments of genuine and democratic elections.

340. By contrast, the PACE and EP delegations, composed of elected MPs, had opted for a more political approach based on what the report by the EP delegation (the “EP report”) described as “constructive criticisms”.³²⁰ According to the evidence before the Investigation Body, the idea was to point out the many deficiencies in the general electoral context, including those highlighted by the Monitoring Committee of the Council of Europe, the Venice Commission and the OSCE itself, while at the same time acknowledging some areas of progress. This was done in order to avoid confrontation with the Azerbaijani authorities and thereby enable PACE and EP to continue to assist the country along the path to becoming a consolidated democracy. The fact that during their short-term observation mission, which had been limited to the days immediately preceding election day and election day itself, they had not witnessed any major shortcomings allowed them to use a softer tone than ODIHR in their statements and final reports. That approach, which did not receive

³¹⁷ Harald Jepsen’s oral evidence (22 January 2018).

³¹⁸ <http://www.osce.org/odihr/elections/68439?download=true> (last accessed on 15 February 2018).

³¹⁹ <http://www.osce.org/institutions/110015?download=true> (last accessed on 15 February 2018).

³²⁰ http://www.europarl.europa.eu/intcoop/election_observation/missions/2009-2014/2013_10_09_azerbaijan.pdf (last accessed on 15 February 2018).

overwhelming support within PACE, transpires from both the joint PACE/EP statement³²¹ and the ad hoc committee final report.³²²

341. On 21 November 2013, Mr Walter, in his capacity as chair of the ad hoc committee, reported to the Bureau about the election observation mission. It appears from documentary evidence examined by the Investigation Body that the ad hoc committee regretted that communication between the observation teams had broken down and that, contrary to the established practice, two separate statements had been delivered and two different press conferences had been held the day after polling day. Mr Walter highlighted that the Electoral Code of Azerbaijan had been amended several times but, according to the Venice Commission, key issues had not yet been tackled, such as the reform of the composition of the electoral commissions and its lack of independence. On the election day, the central electoral commission had however been administered fairly effectively. Some shortcomings, such as the rule that voters could register on supplementary voter lists on polling day if they provided an ID card had caused some concern and needed to be addressed by the authorities. During the election campaign, freedom of expression had remained a serious concern in Azerbaijan, although progress had been visible. The ad hoc committee further regretted that the incumbent President had decided not to campaign officially himself, leaving that task to a proxy.

342. Mr Walter added that it had not been possible to integrate all comments sent by members of the delegation as some had been conflicting. However, reported irregularities had been incorporated as fully as possible. The election day result had reflected the pattern of votes cast, thus reflecting the will of the people of Azerbaijan. The ad hoc committee had emphasised that the recent report of the Monitoring Committee had highlighted the concerns about Azerbaijan's compliance with its commitments, particularly on freedom of expression and assembly, and that the authorities wished to improve on this.

343. Several members of the Bureau expressed strong criticism of Mr Walter's report.

344. Ms de Pourbaix Lundin, who had participated in the mission, stated that election day had not been as smooth as described; many shortcomings had been noted with regard to the managing of the polling stations and the counting of ballots. Those elements had not at all been reflected in Mr Walters' report. She had therefore been unable to agree with the text.

345. Mr Gross, who had also participated in the mission, believed that ODIHR's analyses had been very valuable and their findings had gone in a similar direction to his own. He had found the report presented for discussion contradictory: it had rightly underlined that elections were not merely about the election day, yet in substance it had focused on the election day only. Moreover, it had given too positive a picture of the election as a whole. He had since 2000 observed all elections in Azerbaijan except one, and regretted that, in fact, there had been no progress at all. It was strange that the Assembly had stated that progress had been made, whereas in fact regression could

³²¹ Appendix 6 to the ad hoc committee report:

<http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnNveG1sL1hSZWYvWDJlURXLWV4dHluYXNwP2ZpbGVpZD0yMDI1OSZsYW5nPUVO&xsl=aHR0cDovL3NlYWwFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRc1BVC1YTUwYUERGlnhzbA==&xsltparams=ZmlsZWlkPTlwMjU5>

(last accessed on 15 February 2018).

³²² <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnNveG1sL1hSZWYvWDJlURXLWV4dHluYXNwP2ZpbGVpZD0yMDI1OSZsYW5nPUVO&xsl=aHR0cDovL3NlYWwFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRc1BVC1YTUwYUERGlnhzbA==&xsltparams=ZmlsZWlkPTlwMjU5>

(last accessed on 15 February 2018).

be witnessed. He had no doubt about the methodology carried out by the OSCE and ODIHR and the quality of their evaluations. A clash between observer organisations was for him unacceptable.

346. The report,³²³ as adopted by the Bureau by a very narrow majority, contained statements welcoming some progress in the electoral process and criticism of the overall situation, including serious concerns about media freedom. The report mentioned the fact that some members of the ad hoc committee had reported certain irregularities in the polling stations on election day. It also regretted ODIHR's attitude and pointed out that Mr Voisin, the Special Co-ordinator of the OSCE short-term mission, had publicly stated that ODIHR had failed to include in their report the positive developments highlighted by the PACE delegation. A transcript of Mr Voisin's statement of 10 October 2013 was appended to Mr Walter's report as Appendix 5. As of 20 June 2017, Mr Voisin was the president of the France-Azerbaijan friendship group of the French *Assemblée Nationale*.³²⁴

347. The EP report³²⁵ was drafted along similar lines by Mr Arlacchi. In particular, the EP report noted that there had been a basic disagreement between the three parliamentary delegations (OSCE, PACE and EP) on one side, and ODIHR on the other, on the draft texts that the latter had produced. All four delegations had noted problems in the months prior to election day. The restrictions on freedom of assembly and expression, and the fact that fourteen opposition politicians, journalists and human rights activists had been imprisoned in the months preceding the elections, were regrettable. However, the sixty-six MPs comprising the three parliamentary delegations perceived ODIHR's criticism as too intransigent in areas where electoral rules and electoral behaviours in Azerbaijan were not very different from standards adopted in EU countries and globally. According to Mr Arlacchi's report, the OSCE, EP and PACE delegations had invited ODIHR to change "the hostile tone of their draft document". The three parliamentary delegations also disagreed with ODIHR on the evaluation of the election day itself and on the facts used to support the overall conclusions. In particular, Mr Arlacchi pointed out that ODIHR had given too much weight to ballot stuffing observed in thirty-seven polling stations, which represented only 3.2% of the polling stations observed and 0.7% of the total number of polling stations.³²⁶ His report also criticised the fact that ODIHR had assessed 58% of polling stations as "bad or very bad" without providing a definition of "bad or very bad".

348. Mr Jepsen, who had been the deputy head of the ODIHR mission, believed that the EP delegation had been lobbied.³²⁷

349. Several witnesses heard by the Investigation Body confirmed their support for the political and short-term observation approach which had led to the adoption of the ad hoc committee report.

350. At his hearing before the Investigation Body,³²⁸ Mr Walter indicated that he had participated in various guises in fourteen parliamentary elections in the United Kingdom and

³²³ <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbnQvbnceG1sL1hSZWYyWDJILURXLWV4dHluYXNwP2ZpbGVpZD0yMDI1OSZsYW5nPUVO&xsl=aHR0cDovL3NiZWVudGljcGFjZS5uZXQyWHNsdc9QZGYvWFJZi1XRC1BVC1YTUwYUERGlnhzbA==&xsltparams=ZmlsZWlkPTlwMjU5> (last accessed on 15 February 2018).

³²⁴ [Composition du groupe d'amitié France-Azerbaïdjan au 20 juin 2017 - 14ème législature - Assemblée nationale](#) (last accessed on 15 February 2018).

³²⁵ http://www.europarl.europa.eu/intcoop/election_observation/missions/2009-2014/2013_10_09_azerbaijan.pdf (last accessed on 15 February 2018).

³²⁶ See p. 9 of the report: http://www.europarl.europa.eu/intcoop/election_observation/missions/2009-2014/2013_10_09_azerbaijan.pdf (last accessed on 15 February 2018).

³²⁷ Harald Jepsen's oral evidence (22 January 2018).

numerous local government elections. As a member of PACE, he had observed elections in Serbia, “the former Yugoslav Republic of Macedonia”, Albania, Armenia, Azerbaijan, Turkey and also in Tunisia and Morocco. Thus he had a degree of experience. In his view, there had been a conflict between parliamentarians and ODIHR. Many of ODIHR’s observers, particularly the short-term ones, had very limited experience of elections. Sometimes they were postgraduate students. According to Mr Walter, they had a spread sheet methodology of ticking boxes and very often ODIHR would regard errors in the organisation and management of polling stations as leading to a judgment about a polling station as being “bad or very bad”, which he thought was unfair. This was not just the case in Azerbaijan.

351. Mr Walter considered that there was also a problem with statistics and recalled that during the 2013 election ODIHR had observed voting in 1,151 of the 5,273 polling stations and had found clear indications of ballot-box stuffing in thirty-seven polling stations, which was a mere 3.2% of the polling stations. ODIHR had qualified that as “overwhelming fraud”. Mr Walter recalled telling the ODIHR statistician on a number of occasions that this meant that in 96.8% of the polling stations observed there had not been ballot stuffing.

352. Nevertheless, Mr Walter explained his own philosophy about election observation, which was to produce a balanced report based on the experience on election day, but also including the opinions of the Venice Commission and other Council of Europe organs. He considered that this should be complemented by long-term observation through the Monitoring Committee reports. All of this provided a critical analysis of both the long-term and the short-term background of the elections. The witness pointed out that the report that he had presented to the Assembly as chairman of the ad hoc committee in November of 2013 (see paragraph 346 above) had brought into play all of those factors, particularly the criticisms made by the Venice Commission.

353. Mr Walter recalled that he had been presented, before the elections had taken place, with a draft report by ODIHR. However, he was of the view that a way should be found whereby the PACE delegation could present its own election day observations, alongside the ODIHR observations of what had taken place before. The head of the ODIHR delegation had not been prepared to accept that. At one stage in those discussions, Mr Walter, the head of the OSCE-PA delegation, Ms Barnett, and Mr Arlacchi, had all taken the view that they were there to observe election day and that agreeing a statement which presumed that the election would be flawed was not fair.

354. Mr Walter regretted that a compromise with ODIHR had not been possible and recalled having himself been under some pressure from members of his delegation that he should stick to his positions. He added that, in his view, the discussion had also been clouded by an old political antagonism between Mr Arlacchi and the head of the ODIHR mission, who were both former Italian MPs.

355. Mr Walter stressed that the PACE delegation had been there to observe the presidential election in terms of what happened on polling day. In terms of what had happened beforehand, the PACE delegation had the reports of the Monitoring Committee and that of the Venice Commission, which were included in the report of the ad hoc committee. He believed that it would have been very useful to also include in the report of the ad hoc committee the findings of ODIHR but, because of the disagreement, ODIHR had not shared their findings on election day.

356. As for the contents of the election day report, the witness explained that the members of the delegations on the whole had felt that the election day procedures had been orderly, that

³²⁸ Robert Walter’s oral evidence (7 November 2017).

people had been able to go to the polling stations and to cast their ballots. There had been a report of one polling station where there had been ballot stuffing, but otherwise most people felt that what had happened on election day and the counting of the votes had been overall fair.

357. Mr Destexhe, who was also heard by the Investigation Body,³²⁹ shared Mr Walter's view on the difference between the ODIHR approach and what he believed should be, in general, the parliamentary approach to election observation. Although he had not been a member of the PACE delegation during the 2013 election, Mr Destexhe explained that he had participated in many election observation missions and that there were no good and bad observers. It was a highly subjective exercise. Mr Destexhe had been a member of the Parliamentary Assembly of the OSCE from 2007 to 2010 and recalled that the delegations from that Assembly had systematic disagreements with ODIHR. There was a fundamentally different approach to election observation. ODIHR entrusted this task to young people coming directly out of university with an idealistic conception of the electoral process. They would stick to their guidelines and their checklists. Mr Destexhe believed that with that kind of approach, ODIHR would find elections in France and Belgium undemocratic. On the other hand, because of their own electoral experience, MPs had a more political approach towards elections, with an eye on whether the situation had improved compared to previous elections and on whether the electoral commission was functioning better than previously and so on. Moreover, he stressed that MPs should be free to report on elections according to their own judgment.

Mr Destexhe stressed that one could only report on what one had seen on election day, not on what had happened three weeks before. Otherwise it would not make sense to observe the elections at all. He also believed that ODIHR was a political instrument of the United States. He added that ODIHR would draft their reports before hearing their own observers' debriefing. He recalled that when he had been an observer for the OSCE, the reports had been written before the debriefing and he had never been asked what he had observed.

358. Mr Xuclà, explained to the Investigation Body³³⁰ that he had participated in more than twenty election observation missions in Latin American, African and eastern European countries. Between 2008 and 2009 he had received a degree from the Spanish Diplomatic School as an electoral observer. He had observed elections in Azerbaijan in 2013 and 2015. As far as the former was concerned, Mr Xuclà considered that it was unfortunate that the head of the ODIHR mission had refused to find a compromise to have a joint statement. However, he could not say more on the circumstances of that disagreement as he had not been the head of the delegation and had therefore not participated in the meetings with the other delegations.

359. At his hearing on 22 January 2018, Mr Mariani explained that having long-term and short-term observation missions was hypocritical because ninety percent of the time the prevailing conclusions would be those prepared in advance by the long-term ODIHR mission, which he believed were strongly biased.

360. Members of the PACE secretariat, as well as the NGO representatives heard by the Investigation Body, tended to believe that ODIHR's approach was the right one and that the PACE delegation should not depart from ODIHR's conclusions.

³²⁹ Alain Destexhe's oral evidence (6 November 2017).

³³⁰ Jordi Xuclà's oral evidence (12 December 2017).

361. Ms Schiffer³³¹ believed that ODIHR had a better methodology, its staff were better trained, stayed much longer on the spot and used a statistical approach. They also had a policy of contacting candidates and NGOs. She believed that a small mission of MPs staying a few days could not properly monitor an election. Moreover, the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers (the “Declaration of Principles”)³³² made clear that delegations should be transparent about their methodology: a small mission should provide details about their composition, the time spent on the spot and the number of people met. They should also refrain from making general statements based on the limited scope of their mission.

362. A member of the secretariat of the Venice Commission explained to the Investigation Body that the relevant standards for election observation were Article 3 of Protocol No. 1 to the European Convention on Human Rights, the case-law of the European Court of Human Rights and the Venice Commission’s Code of Good Practice in Electoral Matters.³³³ There was also the 1990 “Copenhagen document” adopted within the OSCE, but it did not have the same legal force as the other cited instruments.

(ii) Allegations of a conflict of interest concerning Mr Robert Walter

363. Several members of the PACE secretariat and representatives of NGOs heard by the Investigation Body considered that members of the PACE and EP delegations who had opted for a different approach from that of ODIHR must have had their own reasons for doing so, and suggestions were made of a conflict of interest involving Azerbaijan and of improper lobbying.

364. Oral evidence given by two members of the PACE secretariat suggested that Mr Walter should not have been appointed as chair of the ad hoc committee for the presidential election in Azerbaijan because of a conflict of interest resulting from the fact that his wife was a Turkish national.

365. According to the declaration submitted by Mr Walter, which the Investigation Body has seen, Mr Walter had not declared any conflict of interest with regard to Azerbaijan.

366. Before the Investigation Body, Mr Walter³³⁴ indicated that he had not felt uncomfortable in any way in being the chair of the ad hoc committee, having regard to his connections with Turkey, remarking that “That would be rather like saying to a Frenchman: you should not have any opinions on what happens in Wallonia”.

367. According to documentary evidence examined by the Investigation Body, after his appointment as chair of the ad hoc committee but before the election observation mission, Mr Walter had already deplored rumours suggesting that the ad hoc committee had not been transparent in its declaration of interests and that the end result would in any event be a biased report on the elections. On the same occasion, he had pointed out that a German NGO (presumably ESI) had already attempted to undermine the Assembly and its staff, but had failed to deliver proof to the Secretary General of the Assembly of what they had alleged to be a deliberate policy of “caviar diplomacy”. Mr Walter had stressed before the Bureau that all declarations on the absence of a conflict of interest were on the table and could be appended to the report.

³³¹ Stefanie Schiffer’s oral evidence (7 November 2017).

³³² <http://www.osce.org/odihr/16935?download=true> (last accessed on 15 February 2018).

³³³ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e) (last accessed on 15 February 2018).

³³⁴ Robert Walter’s oral evidence (7 November 2017).

(iii) Observation missions not affiliated to the IEOM

368. As already noted in the context of the 2010 parliamentary elections, it appears that some former members of PACE were also involved in private observation missions during the 2013 presidential election.

369. Ms Schiffer³³⁵ believed that several States, including Azerbaijan, had put in place a system designed to shed a favourable light on their electoral processes. The system was based on the following methods: repressing independent organisations, buying election observation missions from established democracies and setting up so-called “GONGOS” (government-organised non-governmental organisations). Ms Schiffer confirmed that the Declaration of Principles contained the internationally recognised standards for election observation missions and was binding for all the signatories, including PACE, the EP and ODIHR. Unfortunately, many other election observation missions did not fulfil those requirements. They did not have a transparent methodology and did not publish their reports. Fulfilment of those criteria made the difference between genuine election observation missions and politically motivated ones.

370. Mr Jepsen³³⁶ also reported that ODIHR did not consider private election observation missions as independent and some of them were not transparent as to what organisation they represented.

371. According to Ms Schiffer, the PACE and the EP delegations had become part of that system. Their conclusions had come as a surprise to her, in particular those of the EP delegation, as she had believed that the EP had stronger defences against that kind of behaviour, which included sanctions.

372. There was also a general feeling among the members of the PACE secretariat heard by the Investigation Body that members or former members of PACE participating in private observation missions had been paid by Azerbaijan.

373. In this connection, a member of the PACE secretariat stated to the Investigation Body that Mr Lintner and Mr Iwiński had participated in the observation of the 2013 election as private observers paid by Azerbaijan. The organisation which they had represented was not identified. At that time, Mr Lintner was no longer a member of PACE, while Mr Iwiński, who had still been a member, had been part of the ad hoc committee.

374. Mr Wille³³⁷ confirmed that, in 2013, at the request of the Belgian Government, he had gone to Azerbaijan on a private election observation mission. At that time, Mr Wille had not been a member of PACE and had retired from politics in 2010.

375. Ms Zakharova,³³⁸ one of the representatives of the NGO Freedom Files heard by the Investigation Body, explained that Mr Goris’s organisation EAEO (see paragraph 47. above) had participated in the observation of the 2013 election.

376. At his hearing before the Investigation Body on 23 January 2018, Mr Goris explained that his organisation had observed several elections in Azerbaijan but denied having received any money for that purpose (see paragraphs 175-181 above). He confirmed that for one of the missions conducted in Azerbaijan, EAEO had worked with one of Mr Lintner’s organisations and that that organisation had been responsible for arranging the mission in Azerbaijan. He denied that EAEO had received any payment for that mission. Although Mr Goris did not specify the date of the mission, a press article reported that EAEO had participated in the observation of the 2013 election and quoted Mr Goris as

³³⁵ Stefanie Schiffer’s oral evidence (7 November 2017).

³³⁶ Harald Jepsen’s oral evidence (22 January 2018).

³³⁷ Paul Wille’s oral evidence (11 October 2017).

³³⁸ Olga Zakharova’s oral evidence (5 September 2017).

acknowledging that Mr Lintner's GEFDAB had sponsored the mission by paying for flights and accommodation.³³⁹

377. Mr Goris further explained that EAEO could count on a pool of some 200 well-respected former or serving MPs from all over Europe, Canada and the United States. He added that his organisation worked in a very transparent way and on the basis of strict neutrality. Each observer had to sign a document accepting the rules of conduct of EAEO. A copy of the document was handed over to the Investigation Body. Mr Goris declined to disclose the list of observers in view of the negative light in which his organisation had been presented in the press.

378. At his hearing on 6 November 2017, Mr Moniquet, co-founder of ESISC (see paragraphs 28-32 above), explained that his think-tank was one of several private organisations to have conducted an election observation mission in the context of the 2013 presidential election. The team was composed of about ten members who were all experienced professionals: former military officers, police, intelligence, university professors, OSCE staff and others. Mr Moniquet and one of his associates had also gone on three pre-election missions to check that the election had been fairly prepared. These types of election missions were conducted by the think-tank and funding in the order of EUR 15,000 or 20,000 per mission had been provided by Mr Moniquet's commercial company.

Mr Moniquet recalled that he had come across MPs who belonged to Mr Goris's organisation and assumed that Mr Goris had also been there.

379. At his hearing on 22 January 2018, Mr Jepsen stated that he did not know Mr Goris, Mr Destexhe or Mr Moniquet, but that Mr Lintner was "a well-known figure".

380. According to Mr Walter,³⁴⁰ there were several parliamentary delegations that were affiliated with the IEOM. In Baku, he had had a meeting with the chairman of the parliamentary delegation from the inter-Parliamentary Assembly of the Commonwealth of Independent States (PA-CIS), Mr Slutsky, who was also a member of PACE. In the months preceding the election, while Mr Walter and his wife had been holidaying in Bodrum, Mr Slutsky had rung Mr Walter several times and asked if he could send his private jet to Bodrum airport to pick the witness up to go together and meet with President Aliyev, who had been holidaying in Sardinia. Mr Walter had declined the invitation to fly to meet President Aliyev, as well as Mr Slutsky's invitation, during the monitoring mission, to produce a joint report. He believed that Mr Slutsky was very close to President Aliyev, from whom he had received a medal.

(d) Parliamentary elections of 1 November 2015

381. The 2015 parliamentary elections were peculiar in the sense that, after conducting a pre-electoral mission on 12-14 August 2015, ODIHR decided to cancel its mission owing to a disagreement on the number of long-term observers to be accredited by the Azerbaijani authorities.

382. The PACE Bureau had nevertheless decided to observe the elections before ODIHR's decision to cancel its mission. The chronology of the PACE mission may be described as follows.

383. On 22 June 2015, the PACE Bureau decided to observe the elections and to set up an ad hoc committee for this purpose composed of thirty members plus the co-rapporteurs of the Monitoring Committee (Mr Iwiński and Mr Conde). It also authorised a pre-electoral mission.

³³⁹ [European Parliament goes soft on flawed Azerbaijan election – POLITICO](#) (last accessed on 15 February 2018).

³⁴⁰ Robert Walter's oral evidence (7 November 2017).

384. On 26 June 2015, the Bureau approved the composition of the ad hoc committee. It appointed Mr Xuclà as its chairman and decided to review the situation at its next meeting, depending on whether the Azerbaijani authorities gave their assurance that all the members of the ad hoc committee would be granted access to Azerbaijan to observe these elections and that OSCE/ODIHR would be given the possibility to deploy a long-term observation mission. At the meeting, Mr Gross pointed out that his group (SOC) was not in favour of sending a mission unless Azerbaijan authorised ODIHR to deploy a long-term mission.

385. On 31 August 2015, the Bureau approved an updated composition of the ad hoc committee.

386. On 11 September 2015, ODIHR announced that they had decided to cancel their observation mission owing to the restrictions imposed by the Azerbaijani authorities on the number of observers. ODIHR had intended to deploy thirty long-term observers and 350 short-term observers, whereas the Azerbaijani authorities would accredit only six long-term and up to 125 short-term observers. ODIHR believed that such a restriction would make it impossible to carry out a credible and effective election observation mission.³⁴¹

387. On 28 September 2015, the Bureau discussed whether PACE should send an election observation mission to Azerbaijan in the light of ODIHR's decision to cancel its own mission. After a vote, it decided to deploy the short-term mission under Mr Xuclà's chairmanship. The EP and the OSCE-PA had in the meantime decided not to send a mission.

388. The pre-electoral delegation visited Baku on 20-23 September 2015.

389. The ad hoc committee conducted its observation mission from 30 October to 2 November 2015. On election day, it split into sixteen teams and monitored 103 polling stations in and around Baku, as well as in Sirvan, Sumgayit, Samaxi, Qobustan, Yasamal, Kurdamir, Saatli, Ismayili and Siyazan.

390. Specific allegations were made with regard to PACE's decision to conduct an election observation mission despite the absence of ODIHR; the conduct of the mission in loco by Mr Xuclà; and the behaviour of some members of the ad hoc committee during the mission. In addition, as for previous elections, the 2015 parliamentary elections also saw the presence of a high number of election observation missions not affiliated with any IEOM, including one conducted by Mr Goris's organisation.

(i) Bureau decision to deploy the PACE mission despite the absence of ODIHR

391. At the Bureau meeting of 28 September 2015, some members of the Bureau considered that PACE should send a mission because that was part of the monitoring procedure to which Azerbaijan was subject. They argued that it would be strange to send election observation missions to Belarus, which was not a member State of the Council of Europe, and not to Azerbaijan, which was a member State. Mr Xuclà stressed that the Assembly should respect the Resolution that it had adopted in June 2015. The Investigation Body notes that Resolution 2062(2015)³⁴² adopted on 26 June 2015 by 125 votes in favour, thirteen against and eight abstentions, contained in particular the following statements: "During the 2013 presidential election in Azerbaijan, the election observation delegations of the Parliamentary Assembly of the Council of Europe and the European Parliament observed a free, fair and transparent electoral process overall around election day,

³⁴¹ [Restrictions imposed by Azerbaijan compel cancellation of parliamentary election observation mission, says ODIHR Director Link | OSCE](#) (last accessed on 15 February 2018).

³⁴² [PACE - Resolution 2062 \(2015\) - The functioning of democratic institutions in Azerbaijan](#) (last accessed on 15 February 2018).

improvements being still desirable with regard to the electoral framework” (...) “The Assembly believes that it is as important as ever to continue carrying out its monitoring work. In the event of the inability of other observation teams to participate, the Assembly should consider increasing the Council of Europe's contribution for the forthcoming parliamentary elections to ensure effective scrutiny of the election process”.

392. Other members considered that the only institution with the capacity to assess the electoral process as a whole was ODIHR and that sending small short-term missions did not make sense.

393. Ms Brasseur, who was then the President of PACE, recalled that she had not been in favour of sending a mission in the absence of ODIHR but ultimately she had respected the will of the majority of the Bureau. She explained that Mr Xuclà had been eager to be appointed chairman of the ad hoc committee and that, as chair of the ALDE group, he had put Mr Destexhe in the composition. She also stated that she had warned Mr Xuclà that deploying the mission would give rise to a “tricky” situation and had invited him to contact ODIHR in order to hear the reasons why they had cancelled their own mission, which she believed Mr Xuclà had never done.³⁴³

394. Mr McNamara³⁴⁴ explained that he had been against sending the mission. Initially, he had not intended to participate in the mission because he was a critic of Azerbaijan. He had then changed his mind after seeing that supporters of Azerbaijan had been very active in the Assembly.

Documentary evidence examined by the Investigation Body show that Mr McNamara had called on members of the Bureau to put these elections in context. He had argued that this would not be possible if the Assembly carried out its monitoring only on election day. To be able to put the elections in context it was necessary to rely on long-term observers, who were deployed by the OSCE/ODIHR.

395. The PACE secretariat was generally not in favour of deploying the mission.³⁴⁵ However, after his hearing on 12 December 2017, Mr Xuclà provided the Investigation Body with a list of speaking points that the secretariat had allegedly prepared for him in order to defend PACE's decision to deploy the mission.

396. Mr Xuclà³⁴⁶ also explained that he had been appointed as chairman of the ad hoc committee probably on account of his neutrality towards Azerbaijan. Formally, the decision had been taken by the Bureau unanimously but a consensus on his name had already been reached within the Presidential Committee. He explained that Ms Brasseur had tried to persuade him not to take that position. She had been one of those MPs who had wanted to cut ties with the countries lacking democratic standards, which was a position that he did not share. Mr Xuclà believed that dialogue should be maintained with those countries. Although she had not voted in the Bureau, in her capacity as President of PACE, Ms Brasseur had been of the view that PACE should not observe the elections if ODIHR had refused to observe. She had advised him to contact an ODIHR official. This Mr Xuclà claimed that he had done on one occasion without his call being answered.

397. Mr Xuclà pointed out that when Russia had not invited PACE to observe elections in September 2016, ODIHR had nevertheless deployed its mission.

398. There had also been discussions within the Venice Commission on whether to participate in the mission given ODIHR's decision. Eventually, the Venice Commission decided to participate in the mission.

³⁴³ Anne Brasseur's oral evidence (11 October 2017).

³⁴⁴ Michael McNamara's oral evidence (11 October 2017).

³⁴⁵ Oral and material evidence from staff members of the PACE secretariat.

³⁴⁶ Jordi Xuclà's oral evidence (12 December 2017).

399. The circumstances preceding the Bureau meeting of 28 September raised the suspicion among several members of the PACE secretariat that there had been very active pro-Azerbaijan lobbying in preparation of that meeting and that Mr Conde and Mr Iwiński, the then co-rapporteurs on Azerbaijan in the Monitoring Committee, had been clearly lobbied in the sense of deploying the election observation mission.

As already noted, according to some members of the PACE secretariat heard by the Investigation Body, the secretariat had found in a meeting room a copy of an email sent by Mr Goris to Mr Iwiński on 25 September 2015. That email contained the text of a letter for Mr Conde’s signature, in which Mr Conde and Mr Iwiński “strongly urged” the members of the Bureau to deploy the mission. In the witnesses’ opinion, it followed that the letter had been drafted by Mr Goris (see paragraph 172 above). The Investigation Body was provided with a copy of the email from Mr Goris to Mr Iwiński.

(ii) Allegations concerning Mr Xuclà’s conduct of the mission

400. Several members of the PACE secretariat, some of whom had a direct knowledge of the events, others with only indirect knowledge, recalled that Mr Xuclà had taken a much firmer ownership of the mission than other heads of delegations, including by deciding on the composition of the observer teams, the areas of deployment on election day and the particular NGOs to invite to official meetings.

One of those staff members also reported that Mr Xuclà had refused to meet with Mr Ilgar Mammadov, an opposition politician in detention following his arrest in 2013 and his conviction in 2014. Mr Mammadov is considered one of the most prominent political prisoners in Azerbaijan.

401. As to the issue of NGOs, one staff member explained that Mr Xuclà had decided not to meet with some of the important organisations present in Azerbaijan, without however mentioning them. The same witness stated that he had been asked by Mr Schwabe, Ms Finckh-Krämer (Germany) and Mr Schennach to accompany them to a confidential meeting with some NGOs and not to mention this to other MPs or to other staff members. The account about the meeting was confirmed by Mr Schennach³⁴⁷, who referred to a “top secret” meeting with about thirty political activists and relatives of imprisoned dissidents.

402. With regard to the composition of the teams and their deployment to the polling stations, Mr Torcătoriu³⁴⁸ explained that usually it was ODIHR that provided a list of the polling stations. The PACE delegation would then split into teams assigned to particular geographical areas within which they were free to monitor the polling stations of their choice. The witness did not clearly explain who had provided the list of polling stations during the 2015 mission and did not recall whether Mr Xuclà had provided that list himself. Another member of the secretariat recalled that Mr Xuclà had come to his hotel room with a map of Azerbaijan to discuss the assignment of the teams to their respective geographical areas.

It appears from an email that Mr Torcătoriu sent to his hierarchy that, from a logistical point of view, the election observation mission, like the pre-electoral mission, had been organised with the assistance of the Council of Europe office in Baku and the Azerbaijani delegation to PACE.

³⁴⁷ Stefan Schennach’s oral evidence (24 January 2018).

³⁴⁸ Bogdan Torcătoriu’s oral evidence (6 November 2017).

403. Mr Xuclà explained that it had been Mr Torcătoriu who had had the list of polling stations, which had probably been provided previously by ODIHR. On the logistical aspects of the mission, Mr Torcătoriu had been working together with the Council of Europe office in Baku, headed by Ms Filipović. Mr Xuclà recalled that he had checked the location of the polling stations on a map of Azerbaijan and the only change that he had eventually made in the list of polling stations was to reduce it because it was too long. At her hearing on 23 January 2018, Ms Filipović informed the Investigation Body that the list of polling stations was usually provided to the secretariat by the Azerbaijani Government. As for the composition of the observer teams, Mr Xuclà recalled that it was “like in school”, as some members wanted to team up with their friends. For instance, Mr Preda had teamed up with a Moldovan member of the ad hoc committee because they both spoke Romanian.

404. There was strong criticism made of the way that Mr Xuclà had organised and conducted the meeting of 2 November 2015. The meeting had been held in the morning of 2 November. At the meeting, Mr Xuclà had distributed a preliminary draft, which had then been discussed by twenty-three members of the ad hoc committee with the legal assistance of the Venice Commission. The draft had been adopted by secret ballot, with sixteen votes in favour and seven against.

405. It appears from all the evidence heard and the material examined by the Investigation Body that the meeting was a very heated and emotional one. The Investigation Body heard reports that, during the meeting, some of the MPs belonging to the majority had been very dismissive towards the members of the secretariats of PACE and the Venice Commission who were present at the meeting. These included, in particular, Mr Agramunt and Mr Destexhe, who were described as “aggressive”.

According to those witnesses, discussions had been very tense and Mr Xuclà would only give the floor to his pro-Azerbaijan colleagues. However, it appears from an email sent by one of those witnesses on 3 November 2015, that the situation had been more nuanced. In that email the witness in question considered that there had been a clear bias in the selection of the order of speakers and pointed out that one of the MPs, Mr Attila Mesterházy (Hungary), had had to leave the meeting in a hurry before taking the floor because he had a flight scheduled.

406. At his hearing of 12 October 2017, Mr Schwabe confirmed that Mr Destexhe had been “very aggressive” towards the staff member of the Venice Commission, whom he (Mr Schwabe) had tried to protect.

407. Mr Destexhe³⁴⁹ confirmed that he had behaved in quite a hostile way to the members of the secretariat who had been present at the meeting. He recalled that the staff member of the Venice Commission had been chatting with members of the PACE secretariat during the discussions between MPs expressing a negative opinion on the election. Mr Destexhe described himself as a direct person and admitted having confronted the staff member of the Venice Commission, who had had the perfect right to be present at the meeting under the agreement with the Venice Commission but who should have asked for the floor if he had wanted to make comments.

Mr McNamara³⁵⁰ recalled that at the meeting Mr Destexhe had taken an active role; Mr Agramunt had been “pleasant and professional”; and Mr Preda had become very aggressive and personal, in particular against the staff member of the Venice Commission.

The staff member of the Venice Commission in question stated that he had attended the meeting alone, since Mr Manuel Gonzalez Oropeza (the member of the Venice Commission who was part of

³⁴⁹ Alain Destexhe’s oral evidence (6 November 2017).

³⁵⁰ Michael McNamara’s oral evidence (11 October 2017).

the PACE delegation) had already left. He recalled that the memorandum prepared by the Venice Commission had not been taken into account and that Mr Xuclà had not allowed him to present it at the meeting. However, the witness also recalled that he had been given the floor and had been able to propose an amendment on a legal issue concerning the citation of the Venice Commission standards, which had been rejected. The witness also pointed out that the members of the Venice Commission delegation had noted several irregularities in the course of the elections which they had brought to the attention of Mr Xuclà. He considered that this should have prompted a more critical approach in the statement. In the witness's view, another unusual aspect of the 2015 mission was that Mr Xuclà did not want to distribute his draft statement before the meeting, thereby not allowing other MPs enough time to study the draft and to make counterproposals.

408. In this connection, Mr Sawicki³⁵¹ reported that he had learned that in the evening of election day, Mr Xuclà had informed the secretariat that he would draft the statement himself. The following morning, Mr Xuclà had produced a text drafted in perfect English, even though his English was not perfect. When asked how he had managed to do it, Mr Xuclà had stated that he had drafted it "in Spanish" and sent it to his assistant in Spain, who had translated it for him.

409. Another member of the PACE secretariat with direct knowledge of the events informed the Investigation Body that, for the pre-electoral mission statement (Appendix 2 of the ad hoc committee report),³⁵² Mr Xuclà had produced a seven-page statement in perfect English within forty-five minutes, which he believed to be impossible. Mr Xuclà had then told him that he had drafted it "in Catalan" and had it translated by a colleague in Spain. He had done the same thing with the election statement.

This account was confirmed by another staff member with direct knowledge of the events. He recalled having been very surprised that Mr Xuclà, whose command of English was "very good", had been able to produce a text in "perfect English" in such a short period of time. The latter staff member also reported that the secretariat had already prepared a draft election statement, which Mr Xuclà had not even read. With regard to the pre-electoral statement, it appears from an email sent by that staff member to his hierarchy in Strasbourg on 23 September 2015, that the draft pre-electoral statement prepared by Mr Xuclà had been accepted unanimously by the members of the pre-electoral mission. The only change had been the deletion of two paragraphs referring to the fact that Ms Filipović and several ambassadors whom the mission had met had been in favour of deploying the election observation mission despite the absence of ODIHR. The witness believed that the change had been decided after Ms Filipović had advised Mr Xuclà in that sense.

410. At his hearing of 6 November 2017, Mr Destexhe said that he had not been aware that the secretariat had prepared a draft statement. He considered that it was not the secretariat's role to submit a draft statement to the chair of the ad hoc committee because experienced MPs did not need the secretariat to put a statement together. In any event, he recalled that no member of the secretariat had asked him his opinion on the elections before preparing any such draft.

411. As already noted, the view among the staff members heard by the Investigation Body was that the statement had been drafted in English by somebody other than Mr Xuclà, with close links

³⁵¹ Wojciech Sawicki's oral evidence (5 September 2015).

³⁵² [http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnvveG1sL1hSZWYvWDJlURXLWV4dHIuYXNwP2ZpbGVpZD0yMjI2OSZsYW5nPUVO&xsl=aHR0cDovL3NlbnWFudGlicGFjZS5uZXQvWHRsdC9QZGYvWFJlZi1XRClBVC1YTUwUwUwUERGlnhzbA==&xsltparams=ZmlsZWlkPTlyMjY5](http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnvveG1sL1hSZWYvWDJlURXLWV4dHIuYXNwP2ZpbGVpZD0yMjI2OSZsYW5nPUVO&xsl=aHR0cDovL3NlbnWFudGlicGFjZS5uZXQvWHRsdC9QZGYvWFJlZi1XRClBVC1YTUwUwUERGlnhzbA==&xsltparams=ZmlsZWlkPTlyMjY5)
(last accessed on 15 February 2018).

with Azerbaijan. They questioned Mr Xuclà's account of the drafting and translation of the statement.

412. Mr Schwabe³⁵³ and Mr McNamara³⁵⁴ told the Investigation Body that they had asked Mr Xuclà to have the statement prepared by a drafting committee and that their proposal had been rejected. At his hearing on 12 December 2017, Mr Xuclà denied having received any such proposal. He explained that throughout his parliamentary life he had drafted his speeches himself and he could not accept that two days before election day, the secretariat would present its own conclusions about elections that had not yet taken place. Moreover, he was convinced that Mr Torcătoriu had not prepared the draft himself and had received it from someone within the secretariat in Strasbourg. In his opinion, the role of the secretariat was to take care of logistics and provide legal advice.

413. Mr Xuclà confirmed to the Investigation Body³⁵⁵ that he had drafted the statement himself in Catalan and had then sent it to a colleague from his party back in Spain by email. The person in question was fluent in English as her partner at the time was a British citizen. He later provided to the Investigation Body a copy of an email exchange dated 1 November 2015 and sent at 11.41 p.m. between himself and the person in question, who, at the Investigation Body's request, also provided a written statement.

In her statement, written in non-perfect English, she confirmed that during the week preceding the election week, Mr Xuclà had asked her to remain available on 1 and 2 November to help him with the drafting of some texts in English. She had received a text in English and Catalan which she had arranged to be rendered in proper English after discussing it on the phone with Mr Xuclà.

414. The Investigation Body notes that the electoral statement contained in the email exchange, which reflected the statement made to the press on 2 November 2015 (Appendix 4 of the ad hoc committee report³⁵⁶), was less than two pages long and contained 736 words. The pre-electoral statement (Appendix 2 of the ad hoc committee report) was a little more than one page long and contained 553 words.

415. Mr Xuclà also explained that he had met all the observer teams individually for a debriefing at the end of election day, sometimes late in the evening. That was the reason why he had been unable to distribute his draft ahead of the meeting.

He denied that he had not given the floor to dissenting members of the ad hoc committee. He had given the floor to everyone who had been in the meeting room, the members of the secretariat and the staff member of the Venice Commission speaking at the end.

416. The final statement indicated in particular that "[t]hroughout election day, the Mission did not report any major or systemic violations of the Election Code. However, in a few polling stations minor ballot stuffing was observed. While the Mission could not establish the source or the responsibility for this, it deplores this practice and calls on the CEC to duly investigate and to report on this irregularity ... During the count, some shortcomings mainly related to gaps in the expertise of electoral staff were observed, not however influencing the final result. The Mission urges the CEC to

³⁵³ Frank Schwabe's oral evidence (12 October 2017).

³⁵⁴ Michael McNamara's oral evidence (11 October 2017).

³⁵⁵ Jordi Xuclà's oral evidence (12 December 2017).

³⁵⁶ <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnRveG1sL1hSZWYvWDJlURXLWV4dHluYXNwP2ZpbGVpZD0yMjI2OSZsYW5nPUVO&xsl=aHR0cDovL3NiYWVudGljcGFjZS5uZXQvWHRsdC9QZGYvWFJlZi1XRClBVC1YTUwvUERGLnhzbA==&xsltparams=ZmlsZWlkPTlyMjY5>

(last accessed on 15 February 2018).

further improve the training of staff in this area. Besides electoral issues, the Mission notes with regret that serious concerns in the sphere of human rights still remain in Azerbaijan as several human rights defenders and NGO activists are imprisoned on different charges”.

417. Three minority members of the ad hoc committee, Mr Schwabe, Mr McNamara and Ms Finckh-Krämer, later joined by a fourth one, Mr Mesterházy, decided to issue a dissenting statement (Appendix 5 of the ad hoc committee report). In their statement, they were very critical of the general human rights situation in Azerbaijan, which had marred the overall electoral context. They did not express any views or dissent with regard to what had happened on election day. They stressed that they had not been in favour of PACE sending a short-term election observation mission in the absence of ODIHR.

418. At his hearing on 11 October 2017, Mr McNamara confirmed that on election day he had not seen any irregularities. However, from his previous experience, he knew that it was impossible to focus only on the election day and that the broader conditions in the country needed to be taken into account. He recalled that Mr Xuclà had been keen to achieve some type of consensus within the ad hoc committee, whereas he himself was not so keen to achieve a consensus as it was quite clear that Mr Xuclà’s report would focus very much on a peaceful election day without looking in any way at the suppression of freedom of assembly and freedom of expression in Azerbaijan. For Mr McNamara, to seek to validate an election process in such circumstances seemed to be ridiculous and almost to bring the Assembly into complete disrepute.

419. Two other members, Ms Ioanneta Kavadia (Greece) and Mr Ögmundur Jónasson (Iceland), whose two-paragraph amendment had not been accepted by the majority, posted their own statement on their website (Appendix 6 of the ad hoc committee report). Like the majority of the delegation, they welcomed some positive developments in the electoral process but regretted that those developments had not been put in a more critical context.

420. The dissenting statements were heavily criticised by some members of the majority, who considered that they were in breach of the PACE rules.

421. Mr Xuclà presented the final report of the ad hoc committee at a Bureau meeting held on 26 November 2017 in Sofia. He underlined that elections were a process with precise preconditions. Some of them included the existence of pluralism and the possibility for candidates to run. These conditions had not been fulfilled in Azerbaijan because of human rights violations and the fact that some candidates had been in prison. The ad hoc committee had had a mandate to observe the election day and on that day the process had not been perfect, with irregularities such as ballot stuffing and violation of secrecy of the vote in some polling stations. The report had also taken note of the fact that the Central Electoral Commission had invalidated the vote in one constituency. Mr Xuclà explained to the Bureau that there had been diverging views within the ad hoc committee and that he considered that as perfectly normal. He pointed out that in breach of paragraph 23 of the Guidelines for the observation of elections by the Parliamentary Assembly, some members of the ad hoc committee had made public their dissenting views at the time of the press conference, which had confused the message coming from the Assembly. However, he had agreed to append the dissenting statements to the report in order to reflect the variety of views expressed by the members of the ad hoc committee.³⁵⁷

³⁵⁷ PACE documentary evidence examined by the Investigation Body.

422. Before the Investigation Body, Mr Xuclà³⁵⁸ stated that the confusion over whether a dissenting statement was authorised had been created by the position taken by Mr Torcătoriu. He further explained that the first dissenting statement seemed to be a copy of a document that the ad hoc committee had previously received from an NGO. He recalled that Mr McNamara had left immediately before the meeting and that Mr Schwabe kept leaving the meeting before the end of the discussions, as if he were preparing something in parallel. This latter circumstance was confirmed by Mr Destexhe.

423. At his hearing of 12 October 2017, Mr Schwabe explained that at the time he had presented his dissenting statement, he had not been aware that it was against the rules.

424. At his hearing of 6 November 2017, Mr Torcătoriu, the administrator in charge of the secretariat of the ad hoc committee, indicated that at the meeting of 2 November 2015, Mr McNamara and Mr Schwabe had asked him whether they could make a separate statement. Given the absence of any precedents, he had answered affirmatively. However, before the Investigation Body, he pointed out that this was only his personal view.

425. Another staff member of the PACE secretariat reported that Mr Preda had sent an official letter complaining about Mr Torcătoriu's behaviour.

426. At his hearing,³⁵⁹ Mr Destexhe stated that since none of the MPs present had had a copy of the applicable PACE rules, they had been able to rebut Mr Torcătoriu's position. He added that after the meeting he had gone to the hotel business lounge where he had seen McNamara using a computer. On the screen, Mr Destexhe could see a long and very critical statement against Azerbaijan, which he believed had been prepared ahead of the meeting, before even listening to the other members' debriefing of the election day.

427. Following Mr Xuclà's presentation of the ad hoc committee report to the Bureau, Mr Kox, head of the UEL group, recalled that he had not been in favour of the Assembly sending a delegation to observe these elections without its usual partners. However, once the decision to participate had been made, his group had decided to participate. He complimented Mr Xuclà on having headed an election observation mission for the first time, in rather complicated circumstances. The members of the UEL group had voiced their disagreement with the press statement because they could not agree with defining those elections as free and fair. Many things surrounding those elections had not been right or handled properly. The report, however, was more outspoken and balanced than the press statement issued after election day. He also appreciated the fact that the dissenting opinions had been appended. In those circumstances, he had felt that he could support the report, as opposed to the statement.

428. At the Bureau meeting of 26 November 2015, Ms Brasseur, then President of PACE, concluded that the statement made after the elections had not reflected all the nuances included in the final report.³⁶⁰ On 11 October 2017, before the Investigation Body, she explained that this had been due to the fact that Mr Xuclà had accepted all the proposed amendments to his final report.

(iii) Conflict of interest and individual behaviour

429. At the outset, the Investigation Body notes that none of the members of the ad hoc committee which observed the 2015 parliamentary elections, including Ms Strenz and Mr Destexhe, had declared a conflict of interest in respect of Azerbaijan.

³⁵⁸ Jordi Xuclà's oral evidence (12 December 2017).

³⁵⁹ Held on 6 November 2017.

³⁶⁰ PACE documentary evidence examined by the Investigation Body.

430. It also notes that allegations of suspicious behaviour were made against some members of the delegation.

431. Some staff members heard by the Investigation Body found it suspicious that several MPs, whom they did not identify, would not stay in the same hotel as other members of the ad hoc committee or would “simply disappear in the evening”.

432. Several members of the PACE secretariat reported that Ms Strenz, who was supposed to have teamed up with Mr Jónasson, had decided to conduct her observation mission alone and had used a car with a driver and an interpreter who had not been provided by the secretariat. She had done the same thing in Kazakhstan in 2012.

433. Mr Schwabe also reported that Ms Strenz had not been with Mr Jónasson and believed that she had not even observed the elections.³⁶¹ He recalled having seen Ms Strenz carrying shopping bags. He also pointed out that before the mission, Ms Strenz had signed a declaration on the absence of any conflict of interest. However, according to Mr Schwabe, she had recently acknowledged in the German media that she had received money from Azerbaijan at the end of 2014 and the beginning of 2015.

434. Mr Schennach³⁶² also believed that Ms Strenz had not observed the elections and recalled that he had seen her on election day drinking champagne in a bar.

435. As Ms Strenz declined to give oral evidence, the Investigation Body accepted her offer to reply in writing to any questions. In her replies received by mail on 5 February 2018, Ms Strenz confirmed that she had indicated to the secretariat of the ad hoc committee that she wished to observe the elections only in Baku, whereas Mr Jónasson had insisted on travelling outside of the capital. The secretariat had then provided her with a list of polling stations. She did not recall having received any instructions from Mr Xuclà. On election day, she had taken a taxi, which she had paid for from her own money, and had observed about six polling stations in the morning and six in the afternoon. Ms Strenz did not provide any information on whether she had had an interpreter.

She added that her travel and accommodation expenses had been covered by the *Bundestag*, as was usual for this type of mission.

She had supported the statement presented by Mr Xuclà and could not remember the exact reasons why Mr Schwabe had produced a dissenting statement.

436. Ms Strenz also denied any conflict of interest due to the fact that she had had a business relation with Mr Lintner’s Line-M-Trade. Although at the time she had known that Mr Lintner was a member of GEFDAB, she had not known that Line-M-Trade was financed by Azerbaijan.

437. At his hearing on 12 October 2017, Mr Schwabe also reported that on election day he had teamed up with Ms Adele Gambaro (Italy). During her election observation, she had been very critical about some issues, in particular the presence of cameras in the polling stations. However, when they had met Mr Xuclà in the evening to report on what they had seen, she had not made any mention of it.

438. Mr Schwabe also testified that he had seen Mr Seyidov, the head of the delegation of Azerbaijan to PACE, together with Mr Agramunt and Mr Destexhe. On 2 November 2015, he had seen Mr Iwiński and Mr Slutsky making statements on the local television.

439. The Investigation Body also heard evidence from members of the PACE secretariat implying that Mr Agramunt might have been bribed by being offered prostitutes.

³⁶¹ Frank Schwabe’s oral evidence (12 October 2017).

³⁶² Stefan Schennach’s oral evidence (24 January 2018).

One staff member had seen Mr Agramunt going to his hotel room in the company of three young women. Another staff member stated that Mr Agramunt “had been seen” on one occasion with two young women and at another with one young woman. A third staff member reported that there had been rumours about women knocking on doors and some MPs accepting them and others not.

(iv) Election observation missions not affiliated with any IEOM

440. Ms Schiffer³⁶³ explained to the Investigation Body that the 2015 monitoring mission conducted in Azerbaijan by her organisation, EPDE, in Azerbaijan had been headed by Sergey Tkachenko, a Ukrainian member of EPDE who was also a staff member of the Council of Europe employed in the Council of Europe’s Kyiv office. His firm had a strong methodology and operated in cooperation with local partners. The research focused on interviews of members of electoral observation missions in the media.

441. Ms Schiffer had been surprised by the number of delegations – forty-nine out of fifty-one – which had not criticised the 2015 elections. She believed that there had been certain interests, including financial ones, behind those forty-nine delegations. The number of what the witness called “fake missions” had been so high that it certainly reflected a major and well-organised effort. However, the witness did not know whether those delegations had cooperated between themselves or how they were organised.

442. In this connection, Ms Schiffer recalled that when EPDE had once applied to the Armenian Central Election Commission in order to get accreditations for the monitoring of the 2016 referendum, accreditation had been denied because there were already too many observers scheduled. That was a consequence of the fact that Armenia was also fully using the system of “fake observers”, which was common in post-Soviet countries. Ms Schiffer recalled that her organisation had received letters of praise from Azerbaijan after it had criticised elections in Nagorno-Karabakh. According to Ms Schiffer, the difference between Azerbaijan and Armenia was that Azerbaijan had more money. She did not know whether the conclusions reached by the PACE delegations had influenced the conclusions of other missions, but believed that they increased the legitimacy of other missions which followed the same line.

443. Ms Schiffer believed that the PACE delegation and the delegations of other national parliaments, including those of Israel and Australia, had not been impartial during the 2015 elections because those delegations had all made standardised statements in the local media without any methodological basis. EPDE had requested explanations from all the parliaments concerned. Some of them had replied, often after several reminders, that those missions had not been official. Some of them had asked for feedback on how to improve their codes of conduct. EPDE had received a reply from the EP, with which it had later held a round table. EPDE had also been in contact with the PACE secretariat but had not received replies from the Bureau or from the Private Office of the President.

444. At his hearing on 12 October 2017, Mr Schwabe reported, without further explanation, that during the mission he had seen Mr Lintner.

445. Mr Moniquet³⁶⁴ confirmed that his organisation had deployed an observation mission for the 2015 elections, which had produced a favourable report. The mission had observed the elections only on election day, applying the very strict criteria inspired by the OSCE and the Council of Europe.

³⁶³ Stefanie Schiffer’s oral evidence (7 September 2017).

³⁶⁴ Claude Moniquet’s oral evidence (6 November 2017).

A form had been prepared to this effect and every observer, accompanied by a driver and an interpreter, would monitor as many polling stations as possible. They could also monitor some counting stations.

446. A member of the secretariat of the ad hoc committee reported having seen Mr Mariani, Mr Debono Grech and Mr Voisin at Baku airport on 3 November 2015.³⁶⁵

447. According to Mr Schwabe and Mr Schennach, Mr Slutsky was also present during the elections as part of the PA-CIS delegation. A staff member of the PACE secretariat reported that Mr Slutsky had requested a meeting with Mr Xuclà and had invited the latter to a meeting with President Aliyev. Mr Xuclà had not participated in any such meetings.

(e) Presence during the repeat of the parliamentary elections in constituency No. 90 in Azerbaijan: 18 June 2016

448. On 26 May 2016, the Bureau decided to ensure a presence on the occasion of the repeat elections with a delegation composed of Mr Xuclà, and Mr Schennach and Mr Preda in their capacity as co-rapporteurs of the Monitoring Committee.

According to Mr Destexhe,³⁶⁶ Mr Xuclà had asked him to replace him on that mission, which Mr Destexhe had considered useless given that there was nothing at stake in the re-run election in that particular constituency. However, he had accepted.

449. On 24 June 2016, the Bureau took note of a memorandum on the mission presented by the three members. The memorandum had been drafted by Mr Torcătoriu and accepted by all the members after the inclusion of some critical statements at Mr Schennach's request.³⁶⁷

450. The mission was deployed from 16 to 18 June 2016.

451. On Wednesday 15 June, Mr Schennach and Mr Preda had had a meeting with President Aliyev.³⁶⁸

452. On Friday 17 June, President Aliyev met with Mr Destexhe.³⁶⁹

453. Several allegations have been made concerning Mr Destexhe and Mr Preda in the context of that mission.

(i) Allegations concerning Mr Destexhe

454. The allegations concerning Mr Destexhe related principally (a) to the circumstances surrounding his meeting with the President and the related suggestion that his principal motivation was attending the Formula 1 Grand Prix; and (b) to his actual participation in the election observation.

455. It was widely rumoured that Mr Destexhe had met the President in order to request free access to the presidential lounge during the Baku Grand Prix, which was taking place at the same time. The fact that Mr Destexhe had not wanted the head of the Council of Europe office in Baku, Ms Filipović, to be present at the meeting supported that conclusion.

³⁶⁵ Written evidence submitted on 6 November 2017.

³⁶⁶ Alain Destexhe's oral evidence (6 November 2017).

³⁶⁷ Bogdan Torcătoriu's oral evidence (6 November 2017).

³⁶⁸ Available at [Official web-site of President of Azerbaijan Republic - NEWS » Receptions Ilham Aliyev received co-rapporteurs of PACE Monitoring Committee](#) (last accessed on 15 February 2018).

³⁶⁹ Available at [Official web-site of President of Azerbaijan Republic - NEWS » Receptions Ilham Aliyev received Belgian Senator, chairperson of PACE Committee, rapporteur on human rights in Azerbaijan Alain Destexhe](#) (last accessed on 15 February 2018).

Two witnesses stated that Mr Destexhe had actually attended the Grand Prix. One of them explained that Mr Destexhe had attended the race together with President Aliyev, in the presidential lounge, and claimed that the seat had been worth some EUR 10,000.

456. Another witness reported that Mr Destexhe had wanted to attend the Grand Prix and for that purpose had insisted that he should meet the President in his capacity as rapporteur on political prisoners. However, he had been informed that that would not be possible because the election observation mission had nothing to do with political prisoners. Mr Destexhe had then become very angry and said that the secretariat was sabotaging his mandate. He had subsequently himself managed, through his contacts, to meet the President. After his meeting with the President, which had happened one day before election day, the official presidential-linked news agency of Azerbaijan had published a short paragraph about the meeting of the rapporteur with the President starting with the following sentence: “The rapporteur, Mr Destexhe, praised Azerbaijan for the perfect organisation of the Formula One Grand Prix and said how important the organisation of Formula One Grand Prix for Azerbaijan could be”. There was no mention of political prisoners in that statement.

457. The Investigation Body also examined oral and written evidence according to which, on 18 June, Mr Destexhe had been driving to the Agdash district, where the re-run elections were taking place, together with a member of the PACE secretariat. The two observer teams – the other one being composed of Mr Schennach and Mr Preda – had left Baku early in the morning. Shortly before leaving, Mr Destexhe had complained about the quality of the car and, given the secretariat’s refusal to rent a different car, he had called the secretariat of the Azerbaijani delegation at PACE, which had later provided a new car. The swap had taken place in front of a restaurant on the highway from Baku to Agdash. Mr Destexhe’s team arrived in the first village of the Agdash district at around 12.15 p.m. After one hour of election observation, Mr Destexhe had considered that there was no problem and decided to return to Baku. He had been in a hurry because he allegedly wanted to be back in time for the qualifying round of the Grand Prix, which was scheduled to take place that evening. According to this account of the events, the team arrived at their hotel in Baku at 5.10 p.m.

458. It is public knowledge that Azerbaijan was hosting the Grand Prix for the first time. The event, including the qualifying rounds, took place on 17-19 June. The actual race took place on Sunday 19 June 2016.

459. Mr Schennach stated before the Investigation Body that Mr Destexhe had not gone at all to observe the polling stations because he did not like the car he had been provided with.³⁷⁰

460. According to Ms Filipović,³⁷¹ Mr Destexhe’s behaviour towards her on the occasion of his visit to see the President had been extremely rude and unprofessional. Her account of the incident may be summarised as follows.

461. The head of the Azerbaijani delegation to PACE, Mr Seyidov, had told Ms Filipović that she was on the list of people expected for the meeting with President Aliyev. She had then received a phone call from the head of Protocol of the Presidency informing her that Mr Destexhe did not want her to accompany him to the meeting. Since she had nevertheless decided to go to the meeting, Mr Destexhe had shouted at her in an aggressive way. When Mr Destexhe had reached the summer location of the Presidency, which was outside Baku, he had asked the security officers at the gate not to let her in. She had been following in a separate car. The security officers had stopped her,

³⁷⁰ Stefan Schennach’s oral evidence (24 January 2018).

³⁷¹ Dragana Filipović’s oral evidence (23 January 2018).

asked her driver to park the car aside and prevented her from leaving the presidential premises until further notice. Mr Seyidov had later told her that Mr Destexhe had threatened not to attend the meeting if she had been let in.

Ms Filipović also stated that she had sent a note verbale to the Secretary General of the Council of Europe and the then Head of the Secretary General's Private Office, Mr Berge.

Another witness heard by the Investigation Body reported that Ms Filipović had been discouraged by her hierarchy from making a formal complaint about the incident.

462. Ms Filipović nevertheless explained that tête-à-tête meetings could sometimes be useful because they allowed for the discussion of the issue of high-profile political prisoners.

463. With regard to the Grand Prix, Ms Filipović indicated that she did not know whether and how Mr Destexhe had obtained tickets for the race but if he had, he certainly would not have had to buy them in the normal way since it was the practice that foreign dignitaries and ambassadors would receive tickets for free.

464. At her hearing, Ms Filipović stated that she did not recall whether Mr Shennach and Mr Preda had also met the President on that occasion. However, a photograph posted on the website of the Azerbaijani President on 15 June 2015 to mark the meeting,³⁷² showed that Ms Filipović had in fact been present at that meeting.

465. At his hearing on 6 November 2017, Mr Destexhe confirmed that during that mission he had met with President Aliyev, although the visit had not been planned in advance. He had been informed by a member of (presumably) the Azerbaijani delegation to PACE that the two other co-rapporteurs would meet the President. This person had asked Mr Destexhe whether he wanted to join in, which he had of course accepted. However, the co-rapporteurs had anticipated the meeting with the President while the witness was still on the plane. In Baku, Mr Destexhe had been asked if he was nevertheless still available to meet the President, and he had replied that he was.

466. At his hearing, Mr Schennach explained that he had not wanted to meet the President together with Mr Destexhe. He also stated that during his meeting with the President, he had not mentioned the Grand Prix at all.

467. Mr Destexhe recalled that he had been upset with the secretariat because they had declined to assist him in the preparation of the meeting. He said that the reason they had given for declining to assist him was that he was on an election monitoring mission which was not part of his work as a rapporteur.

468. This was confirmed by a note written by Mr Torcătoriu, who had told the secretary of the Azerbaijani delegation to PACE, who had organised the meeting, that such a meeting should not have been arranged because Mr Destexhe was on an electoral monitoring mission and therefore he would not accompany him to see the President.

469. There is no trace of a similar position expressed by the secretariat with regard to the meeting between the President and Mr Preda and Mr Schennach.

470. Mr Destexhe considered that as a rapporteur he had been free to do whatever he wanted and that it had been right that he should seize the chance to see the President and discuss the human rights situation in the country. It had been a good opportunity for him to request the release of some political prisoners, in particular Mr Ilgar Mammadov. Since the secretariat had not been

³⁷² Available at [Official web-site of President of Azerbaijan Republic - NEWS » Receptions Ilham Aliyev received co-rapporteurs of PACE Monitoring Committee](#) (last accessed on 15 February 2018).

cooperating, the practical arrangement had been dealt with by the secretariat of the Azerbaijani delegation to PACE.

471. Mr Destexhe recalled that when he had arrived in Baku, the head of the Council of Europe office there had wanted to attend the meeting with him, which he had refused because he had not received any assistance from her. He strongly denied having arranged to block her car at the gate of the presidential premises.

Mr Destexhe recalled that when he had arrived at the presidential premises, there had been many television cameras. When he had met the President in front of the cameras he had not raised the issue of political prisoners, but had rather engaged in “small talk” about irrelevant things. At the same time Baku happened to have been hosting the Grand Prix, so they had spoken about that before starting the real business. The witness did not remember whether he had congratulated the President on hosting the Grand Prix but acknowledged that he might have done so.

472. Mr Destexhe strongly denied having attended the Grand Prix, having no interest in Formula 1 races, and denounced this allegation as a typical example of pressure and manipulation to which he had been subjected as rapporteur. In this respect, he considered that political opponents and NGOs in Azerbaijan were not concerned about human rights but were only aiming at excluding Azerbaijan from the Council of Europe and replacing the regime, possibly with Islamists. The allegation about the Grand Prix was false and had been circulated by these NGOs.

(ii) Allegations concerning Mr Preda

473. A member of the PACE secretariat heard by the Investigation Body made similar allegations concerning Mr Preda, reporting that the latter had chosen to visit Azerbaijan because of the Grand Prix. On that occasion, Mr Preda’s hotel room had been paid in cash by an unidentified man. Later, the witness had learned that the hotel had been paid for by the Romanian embassy (see paragraph 106 above).

(f) Constitutional referendum of 26 September 2016

474. On 5 September 2016, the Bureau constituted an ad hoc committee to conduct a mission to assess the referendum, composed of one representative from each political group as well as the co-rapporteurs of the Monitoring Committee.

475. There are no specific allegations about the mission of the ad hoc committee but, according to oral evidence heard by the Investigation Body, Mr Mariani, then a serving member of PACE, and Mr Iwiński, then already a former member, participated in the election observation mission organised by Mr Goris’s organisation.

476. At his hearing on 22 January 2018, Mr Mariani confirmed that he had participated in that mission, as he had participated in many mission of that nature and in many countries, including Russia, Uzbekistan and Moldova. He explained that he received many invitations for that kind of mission from a variety of organisations, with no specific focus on Azerbaijan. That was also due to the fact that for many years he had been the representative at the French Parliament of French expatriates for a constituency extending from Moldova to New Zealand.

In his view, the proliferation of election observation missions not related to ODIHR or PACE started with the Ukrainian so-called “Orange Revolution”, which had made many people realise that, in the current context of “soft power” and “communication” there was a need to counterbalance ODIHR’s dominant position.

477. Mr Mariani stressed that it was normal practice that the organisations inviting MPs to participate in election observation missions would cover travel and accommodation expenses. He added that what really mattered was not who was paying for those missions but whether or not the participants were free to say what they wanted.

478. At his hearing of 13 October 2017, Mr Iwiński confirmed that he had participated in the election observation mission organised by Mr Goris on the occasion of the constitutional referendum. More than thirty-five members had taken part in the mission. The witness had been invited to participate by the Speaker of the Maltese Parliament. He did not know about the funding of the mission.

III. OTHER FACTS AND ALLEGATIONS

479. As noted in the introduction of this report, in the course of the Investigation Body's work, further facts and allegations of suspicious practices and activities within PACE concerning different countries have been brought to its attention. Due to the organisational, temporal and operational limitations of the Investigation Body's mandate, the Investigation Body has been unable to conduct a thorough investigation into all those allegations. It has therefore decided to set them out in the report so that the relevant Council of Europe authorities, including PACE, and, where appropriate, national authorities can inquire into these allegations as they might see fit. These facts and allegations are reported below with regard to each of the countries concerned.

A. Armenia

480. A number of witnesses expressed concerns as to how PACE's work on Armenia had been conducted. On 24 July 2017 Mr Arieu had publicly denounced on his Facebook account an attempt by members of the Armenian delegation to PACE to offer him a bribe in exchange for avoiding mentioning of Nagorno-Karabakh as a region of Azerbaijan in his report "Attacks against journalists and media freedom in Europe".³⁷³ During his hearing on 12 December 2017 before the Investigation Body, Mr Arieu confirmed that he had been offered a bottle of cognac, which he believed to be expensive, by some Armenian counterparts. He recalled that he had refused the bottle and that, the next day, the Armenians had started to claim that his grandmother was Azerbaijani and that he was an agent of President Aliyev. He was offended by this allegation but said that he had not found the offer of the gift to be a very serious matter.

481. During his hearing on 13 October 2017, Mr Marty, a former Swiss member of PACE, reported that his former colleague, Mr John Prescott (UK), who had been rapporteur for Armenia, had told him that he had once found in his hotel room a "present for Ms Prescott", which he had taken without thinking. It was a silverware object worth EUR 1,000 or EUR 2,000. Mr Marty had then convened Mr Prescott and the head of the Armenian delegation in Paris and had told them that this was contrary to the ethical standards of PACE. Mr Marty was, however, aware that there might have been cultural reasons for this type of incident.

³⁷³ Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23400&lang=en> (last accessed on 15 February 2018).

482. During his hearing on 6 November 2017, Mr Destexhe stated that on one occasion he had heard a French member of PACE declaring on the phone that he had lodged an amendment to please his “Armenian friends”.

483. On 7 November 2017 Mr Walter stated that the Armenian lobbying within PACE was a little more subtle than that of Azerbaijan. He explained how, after he had been asked by the Assembly to produce a report on the violence surrounding Nagorno-Karabakh and the other occupied territories, the Armenians had refused him a visa to enter the country. They would not issue an invitation for him to go to Yerevan or facilitate any meetings with the *de facto* administration in Nagorno-Karabakh.

484. During his hearing on 12 December 2017, Mr Lindblad declared that he had once been offered a bribe by the Armenian delegation. It was in the context of a discussion on whether to hold a Forum for the Future of Democracy in Armenia. The witness had been against the proposal, because Armenia had not been living up to democracy standards. At a meeting in Bern (Switzerland) in 2009, the witness had been invited for lunch by the head of the Armenian delegation to PACE, who had offered him “VIP treatment” in Yerevan, which the witness had refused.

B. Kazakhstan

485. Several members of the PACE secretariat alleged various suspicious practices on the part of MPs in the context of the election observation missions in Kazakhstan. In 2012 the PACE observers had been accompanied by three members of the Embassy of Kazakhstan in Brussels, including the ambassador, when traveling to Astana to observe elections. The official programme of work had been provided by the Ministry of Foreign Affairs and that programme had not corresponded to the one initially agreed upon. Moreover, the head of the PACE delegation had arrived one day earlier to Kazakhstan than normally expected in order to facilitate the business meetings of her relative with representatives of the city of Astana and some others, arranged by the Minister of Foreign Affairs of Kazakhstan. Eventually, she had toned down the wording of the text about the elections which was to be adopted by the PACE delegation. At the end of the mission, after the press conference, she had been seen in the lobby of a hotel with the ambassador of Kazakhstan to Belgium who had passed her the telephone after which she had addressed her interlocutor as “Your Excellency” and said that she had been “doing her best” to water down the text. It was believed that she had spoken to the Minister of Foreign Affairs of Kazakhstan.

486. An allegation was also made that two other PACE MPs had enjoyed a special treatment in Kazakhstan. They had allegedly been taken to nightclubs by the representatives of the Government. Moreover, one of them had tried to give the confidential preliminary statement prepared by ODIHR to the authorities of Kazakhstan but the PACE secretariat had eventually managed to prevent that. The other had been supportive of the idea to tone down the official PACE position on the elections in Kazakhstan.

C. Monaco

487. The Investigation Body heard allegations on various suspicious activities and conduct on the part of PACE MPs concerning Monaco. It was alleged that one of the co-rapporteurs in the Monitoring Committee on Monaco had insisted on removing the critical remarks on the Monegasque legal system from the final draft resolution. At the same time, he had financed a large

part of Prince Albert's polar expedition. There had also been considerable pressure to close the monitoring procedure in respect of Monaco.

D. Montenegro

488. On 6 October 2017 the Investigation Body was informed that one of the co-rapporteurs of the Monitoring Committee on Montenegro had asked advice on the investment opportunities in that country from the head of the Montenegrin delegation to PACE.

E. Russian Federation

489. A number of witnesses expressed concerns as to how PACE's work on Russia had been conducted. Allegations were also made by a staff member of the PACE secretariat of a conflict of interest in PACE concerning Russia. In particular, it was alleged that a former senior PACE staff member had at one point taken unpaid leave during which he had worked for the Brussels office of a Russian energy corporation, after which he had assumed another assignment within the COE concerning Russia.

F. Turkey

490. A number of witnesses expressed concerns as to how PACE's work on Turkey had been conducted. An allegation was made by a member of the PACE secretariat of a conflict of interest on the part of Mr Walter with regard to Turkey because of his dual British and Turkish citizenship and because his wife was a Turkish national. His reports were biased when touching upon questions relating to Turkey. Moreover, Mr Walter was allegedly frequently invited to luxury hotels in Turkey and had received medals and other distinctions from that State.

491. For his part, during his hearing on 7 November 2017, Mr Walter explained that after his retirement he had been invited by the Foreign Minister of Turkey to try to help Turkey in its relations with a number of European States, and its ambition to become a member of the European Union. Mr Walter confirmed that he had dual British and Turkish citizenship and that his wife was Turkish. The witness explained that he had never felt himself to be in a conflict of interest. At the time that he had undertaken election monitoring in Turkey, he had not been a Turkish citizen, but he had certainly declared that his wife was Turkish. The declaration had been made on the relevant form.

492. Mr Walter also argued that after having been retained by the Turkish Foreign Ministry, he had surrendered his honorary member's badge and used a visitor's badge when visiting PACE on behalf of the Turkish delegation. He stressed that as the person who had presented the previous code of conduct to the Assembly, he was very much familiar with the provision it contained that one should not use the honorary member's badge for any form of lobbying activity. The information available to the Investigation Body on the entries of former PACE MPs to the PACE building shows that in 2016 Mr Walter used his honorary badge nineteen times to enter the PACE building. Moreover, in January 2016 he was given a visitor's badge, which he used to enter the building, and in April and October 2017 he was again issued a visitor's badge which he used to enter the building.

G. Ukraine

493. During his hearing on 12 December 2017, Mr Xuclà suggested that there had been strange behaviour on the part of a senior member of the PACE secretariat in his work on the Ukrainian file. Mr Fischer, at the hearing of 22 January 2018, said that he had the impression that that person had close connections with the Ukrainian and Armenian authorities. Mr Xuclà also stated that according to a Ukrainian member of PACE, that person had received money from Ukrainian politicians in order to draft reports or influence the drafting of reports in favour of Ukraine.

H. “The former Yugoslav Republic of Macedonia”

494. On 7 July 2017, the Investigation Body received from a member of the PACE secretariat a link to a programme called “360 Degrees”, broadcast on 27 June 2017 by Alsat-M, a national commercial television broadcaster in “the former Yugoslav Republic of Macedonia”.³⁷⁴ The television programme reported on a consultancy contract signed between Mr Walter and the Macedonian Government in October 2016 on the basis of which Mr Walter had received EUR 7,000 per month for consultancy work. A copy of the contract was shown in the television report.

495. It was alleged that the contract had been signed following Mr Walter’s favourable reports on the situation in “the former Yugoslav Republic of Macedonia” while he was still a member of PACE. The report also presented a document containing a list of activities allegedly undertaken by Mr Walter. The report suggested that for his lobbying activities, Mr Walter had been in contact with the head of the Macedonian delegation at PACE, who had allegedly refused to comment on the matter.³⁷⁵

496. During a hearing before the Investigation Body on 7 November 2017, Mr Walter confirmed that he had been an adviser to the Prime Minister of “the former Yugoslav Republic of Macedonia” for a period until the middle of 2017. He also indicated that, under the rules of the Parliamentary Assembly, he had surrendered his PACE honorary member’s badge since he had been working as a consultant for that country or for Turkey.

I. Additional facts and allegations

497. On 17 July 2017, the Investigation Body received in an email from Mr Tom Van Dijck, on behalf of Mr Ian Liddell-Grainger, President of the European Conservatives Group of PACE, a formal complaint alleging forgery and fraud in the context of the creation of the Free Democrats Group.

498. On 1 December 2017 a message was received by the PACE secretariat, which was then forwarded to the Investigation Body, alleging that in 2015 the Council of Europe had granted a consultancy contract to Mr Volontè. The contract, for what was described as a “useless paper” on relations with the Southern Mediterranean region, provided for the payment of EUR 5,000.

³⁷⁴ Available at <https://www.youtube.com/watch?v=6Z91qQUdrQI> (last accessed on 15 February 2018).

³⁷⁵ On 17 August 2017, Mr Vasil Popetrevski, editor of the Macedonian television show “360 degrees” also submitted by email the same allegations. The allegations in the same context have been made by Mr Destexhe during his hearing before the Investigation Body. The ESI has also reported on this matter in a newsletter of 27 December 2017 (available at http://www.esiweb.org/index.php?lang=en&id=67&newsletter_ID=120, last accessed on 15 February 2018).

THE RELEVANT LEGAL STANDARDS

I. PACE ETHICAL STANDARDS IN FORCE AT THE RELEVANT TIME

A. Rules of Procedure of the Parliamentary Assembly

499. The PACE Rules of Procedure (Resolution 1202 (1999) adopted on 4 November 1999 with further amendments;³⁷⁶ hereinafter “the Rules of Procedure”), together with twenty-three complementary texts, regulate the functioning of and the working processes in the Assembly.

500. Rule 13 of the Rules of Procedure, entitled “Code of conduct for members of the Assembly”, provides as follows:

“13.1. In the exercise of their duties, the members of the Assembly shall undertake to comply with the principles and rules set out in the code of conduct for members of the Assembly, appended to these Rules of Procedure as a complementary text.

13.2. The provisions governing transparency and declarations of interest by members of the Assembly are appended to these Rules of Procedure as a complementary text.”

501. The complementary text referred to in Rule 13.1 concerns the Code of conduct for members of the Parliamentary Assembly adopted by Resolution 1903 (2012) on 4 October 2012 (see paragraph 508 below).³⁷⁷

502. Rule 13.2 refers to the complementary text entitled “Transparency and members’ declaration of interest” introduced by Resolution 1554 (2007), adopted by the Standing Committee, acting on behalf of the Assembly, on 24 May 2007 (see paragraphs 515-516 below).³⁷⁸

503. In addition to the Code of conduct for members of the Assembly, the Rules of Procedure in Rule 50.1 provide for the duty of rapporteurs in committees to comply with the specific set of rules of conduct in the performance of their duties. In particular, Rule 50.1 refers to Resolution 1799 (2011), adopted by the Standing Committee, acting on behalf of the Assembly, on 11 March 2011 entitled “Code of conduct for rapporteurs of the Parliamentary Assembly” (see paragraphs 517-518 below).³⁷⁹

504. Under the Rules of Procedure, a failure to observe the Code of Conduct for members of the Parliamentary Assembly may lead to the dismissal of the President and Vice-Presidents of the Assembly and chairmen and vice-chairmen of committees. The relevant provisions provide as follows:

³⁷⁶ PACE Resolutions: 1234 (2000), 1235 (2000), 1266 (2001), 1275 (2002), 1284 (2002), 1296 (2002), 1325 (2003), 1343 (2003), 1348 (2003), 1356 (2003), 1368 (2004), 1369 (2004), 1379 (2004), 1395 (2004), 1431 (2005), 1432 (2005), 1445 (2005), 1447 (2005), 1448 (2005), 1490 (2006), 1491 (2006), 1503 (2006), 1504 (2006), 1515 (2006), 1529 (2006), 1554 (2007), 1583 (2007), 1584 (2007), 1585 (2007), 1658 (2009), 1698 (2009), 1699 (2009), 1712 (2010), 1780 (2010), 1799 (2011), 1841 (2011), 1842 (2011), 1854 (2011), 1903 (2012), 1911 (2012), 1937 (2013), 1965 (2013), 2002 (2014), 2058 (2015), 2102 (2016), 2169 (2017). Available at: <http://assembly.coe.int/nw/xml/RoP/RoP-XML2HTML-EN.asp> (last accessed on 15 February 2018).

³⁷⁷ Available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19161&lang=en> (last accessed on 15 February 2018).

³⁷⁸ Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17542&lang=en> (last accessed on 15 February 2018).

³⁷⁹ Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17970&lang=en> (last accessed on 15 February 2018).

“Rule 54 - Procedure for dismissing the President and Vice-Presidents of the Parliamentary Assembly

54.1. The Assembly may terminate the functions of the President of the Parliamentary Assembly or a Vice-President of the Assembly on the ground that he or she no longer enjoys the confidence of the Assembly, be it that he or she no longer fulfils the conditions required for the exercise of that office or is guilty of serious misconduct by seriously or repeatedly violating the provisions of the Code of Conduct for members of the Parliamentary Assembly.

...

Rule 55 - Procedure for dismissing chairpersons and vice-chairpersons of committees

55.1. A committee may terminate the office of its chairperson or a vice-chairperson at the request of one third of the full members of the committee belonging to at least three political groups and five national delegations on the ground that he or she no longer enjoys the confidence of the committee, be it that he or she no longer fulfils the conditions required for the exercise of that office or is guilty of serious misconduct by seriously or repeatedly violating the provisions of the Code of Conduct for members of the Parliamentary Assembly.

...”

505. Rule 69 of the Rules of Procedure regulates the privileges and immunities of PACE members, thereby complementing the General Agreement on Privileges and Immunities of the Council of Europe of 2 September 1949 and its Additional Protocol of 6 November 1952 (see paragraphs 835-836 below).

B. The relevant codes of conduct

506. In January 2015 PACE published a compendium of different texts and provisions concerning the code of conduct of its members entitled “Code of conduct for members of the Parliamentary Assembly” (hereinafter “the compendium”).³⁸⁰ Against the overarching principles of fairness, transparency and openness in the work of members of the Parliamentary Assembly, the aim of this document was to provide parliamentarians with clear and practical guidance on ethics that are in line with internationally accepted standards.

507. The compendium consists of the following documents:

- Rule 13 of the Rules of Procedure – Code of conduct for members of the Parliamentary Assembly;
- Code of conduct for members of the Parliamentary Assembly;
- Procedure for registering gifts and similar benefits of a minimum value of EUR 200;
- Transparency and members’ declaration of interest (Application of Rule 13 of the Rules of Procedure);
- Code of conduct for rapporteurs of the Parliamentary Assembly;
- Conduct of members of the Parliamentary Assembly during Assembly debates (Rule 22 of the Rules of Procedure);
- Special rules on the title and prerogatives of Honorary President of the Parliamentary Assembly of the Council of Europe (extract);
- Special rules on honorary association with the Parliamentary Assembly (extract);
- Guidelines on the observation of elections by the Parliamentary Assembly (extracts).

³⁸⁰ Available at <http://website-pace.net/documents/10643/375483/CodeOfConduct-EN.pdf/13dd3317-3819-457a-a536-a4898f57db67> (last accessed on 15 February 2018).

1. Code of conduct for members of the Parliamentary Assembly

508. Resolution 1903 (2012) introducing the Code of conduct for members of the Parliamentary Assembly (hereinafter: “the Code of Conduct”) stressed the need for the Assembly to improve its institutional framework by promoting the principles of transparency, accountability and integrity. It explained that the Code of Conduct was intended to supplement, rather than replace, other rules of conduct regarding transparency and the declaration of interests of Assembly members (see paragraphs 515-516 below), rapporteurs (see paragraphs 517-518 below), and those taking part in the observation of elections (see paragraphs 522-524 below).

509. The Resolution also affirmed that the need to consolidate the rules of conduct of PACE members derived from the Assembly’s duty to set an example as a statutory body of an international organisation at the forefront of the fight against corruption, including in the field of politics. Accordingly, by adopting the Code of Conduct, the Assembly intended to guarantee the primacy of public interest in its work and to respond to general concerns arising particularly with regard to political favouritism, offers of gifts or hospitality to members, situations of a conflict of interest or the use of members’ mandates to promote or safeguard personal interests.

510. Moreover, the Assembly wished to introduce greater transparency in its activities and decision-making process. In this context, it expressed concerns with regard to the pressure that some lobbyists, acting on behalf of private entities or States, had exercised on members, even within the Palais de l’Europe. Whereas the Assembly supported a pluralist culture, it reiterated its Recommendation 1908 (2010) on lobbying in a democratic society (European Code of Good Conduct on Lobbying).

511. The text of the Code of Conduct reads as follows:

“Purpose of the code of conduct

1. The purpose of this code is to provide a framework of reference for members of the Parliamentary Assembly of the Council of Europe in the discharge of their duties. It outlines general principles of behaviour which the Assembly expects of its members. By adhering to these standards members can maintain and strengthen the openness and accountability necessary for trust and confidence in the Parliamentary Assembly.

Scope of the code of conduct

2. This code applies to members in all aspects of their public life relevant to their duties as members of the Parliamentary Assembly.

3. Its provisions complement the obligations on members of the Parliamentary Assembly to abide by the rules of conduct, as well as resolutions of the Assembly and decisions of the President relating to members’ conduct and discipline.

4. The application of this code shall be a matter for the Assembly. Guidance on all matters covered by this code of conduct and situations which may arise from its application may be sought from the Secretary General of the Parliamentary Assembly.

General principles of behaviour

5. While performing their mandate as members of the Parliamentary Assembly, members shall:

- 5.1. carry out their duties responsibly with integrity and honesty;
- 5.2. take decisions solely in the public interest, without being bound by any instructions that would jeopardise members’ ability to respect the present code;
- 5.3. not act in such a way as to bring the Assembly into disrepute or tarnish the Assembly’s image;
- 5.4. use the resources available to them responsibly;
- 5.5. not use their public office for their, or anyone else’s, private gain;

- 5.6. declare any relevant interests relating to their public functions and take steps to resolve any conflicts arising in a way that protects the public interest;
 - 5.7. promote and support these principles by leadership and example;
 - 5.8. undertake to comply with the Rules of conduct hereafter.
6. These principles will be taken into consideration when any complaint is received of breaches of this code of conduct.

Rules of conduct

7. Members shall respect the values of the Council of Europe and the general principles of behaviour of the Assembly and not take any action which would cause damage to the reputation and integrity of the Assembly or its members.

8. Members shall avoid conflicts between any actual or potential economic, commercial, financial or other interests on a professional, personal or family level on the one hand, and the public interest in the work of the Assembly on the other, by resolving any conflict in favour of public interest; if the member is unable to avoid such a conflict of interests, it shall be disclosed.

9. Members shall draw attention to any relevant interest by an oral declaration in any proceedings of the Assembly or its committees, or in any relevant communications.

10. No member shall act as a paid advocate in any work of the Assembly.

11. Members shall not request or accept any fee, compensation or reward intended to affect their conduct as members, particularly in their decision to support or oppose any motion, report, amendment, written declaration, recommendation, resolution or opinion. Members shall avoid any situation that could appear to be a conflict of interests or accept an inappropriate payment or gift.

12. Members shall not use their position as a member of the Parliamentary Assembly to further their own or another person's or entity's interests in a manner incompatible with this code of conduct.

13. Members shall use information with discretion, and in particular shall not make personal use of information acquired confidentially in the course of their duties.

14. Members shall register with the Secretariat of the Assembly any gifts or similar benefits (such as travel expenses, accommodation, subsistence, meals or entertainment expenses) of a value in excess of €200 that they accept in the performance of their duties as Assembly members.

15. Members shall ensure that their use of expense claims, allowances, facilities and services provided by the Council of Europe is strictly in accordance with the relevant regulations laid down on these matters.

16. Former members of the Parliamentary Assembly involved in representing and fostering another person's or entity's interests in the Parliamentary Assembly shall not, throughout the period of such activity, benefit from the prerogatives of the honorary associates or the Honorary President of the Parliamentary Assembly as far as the distribution of documents and access to the buildings and meeting rooms are concerned.

Observance of the code of conduct

17. If a member is believed to have acted in breach of the code of conduct, the President of the Assembly may seek clarification and further information from the member concerned, the chairperson of the member's national delegation, the chairperson of the member's political group or the chairperson of the member's committee.

18. If necessary, the President of the Assembly may seize the Committee on Rules of Procedure, Immunities and Institutional Affairs to examine the circumstances of the alleged breach and make a recommendation as to a possible decision to be taken by the President.

19. Should the President of the Assembly decide that the member failed to comply with the code of conduct, he or she may prepare a reasoned statement to be read out in the Assembly if need be and/or inform the speaker of the national parliament concerned.

20. In cases of serious or repetitive breaches of the rules of conduct by a given member, and in accordance with the powers and responsibilities granted to the President of the Assembly in the Rules

of Procedure, the President may take one or several of the following decisions: temporary deprivation of the right to speak and to be enrolled on the list of speakers; temporary deprivation of the right to sign an amendment, a motion or a written declaration. The President shall inform the Assembly accordingly.

21. Members shall co-operate, at all stages, with any investigation into their conduct by or under the authority of the Assembly.”

2. Procedure for registering gifts and similar benefits

512. Relying on paragraph 14 of the Code of Conduct, on 21 January 2013 the Bureau of the Assembly approved a document entitled “Procedure for registering gifts and similar benefits of a minimum value of €200.” The relevant text of this document, reproduced in the compendium, reads:

“In view of the Assembly’s working methods, the following procedure shall apply:

- collection of information: any member having received a gift or enjoyed a similar benefit of a minimum value of €200 must make a declaration to that effect, within one month, by filling out a standard form (appended hereto). The declaration should be e-mailed to the Assembly Secretariat using the following dedicated address (pace.registrationgifts@coe.int).

- information management: once the declaration has been received, it will be entered, by date order, in a register kept by the secretariat of the Committee on Rules of Procedure, Immunities and Institutional Affairs. The information collected will be stored for a period of 5 years.

- access to the register: the declarations are public and may be made available to anyone on request.”

513. The term “other benefit” in the first indent of the above text is clarified with a footnote explaining that “[b]enefits (such as transportation, social or cultural events, meals, etc.) the costs of which are borne by the authorities are excluded from the declaration requirement on condition that these benefits are expressly mentioned in the official programme of the meeting (e.g. Standing Committee, committee or sub-committee or ad hoc committee or sub-committee), visit or mission (for example by the President of the Assembly, a rapporteur or Assembly representative)” (emphasis in the original).

514. A form for declaration of gift and any similar benefit is appended to the above text and also provided in the compendium (p. 9).

3. Transparency and members’ declaration of interest

515. Resolution 1554 (2007) adopting the standards on transparency and members’ declaration of interest underlined, in particular, transparency and accountability as the cornerstones of effective good governance and democracy at national and international level. It also stressed that public confidence in the way parliamentarians discharged their duties depended to a large extent on the presumption that they would not deal with matters in parliament in which they had a conflicting professional or personal interest, which it considered to be accordingly applicable to international parliamentary institutions.

516. The text of the document “Transparency and members’ declaration of interest”, reproduced in the compendium, provides as follows:

“Article 1

1.1. All candidates for rapporteurship shall make an oral declaration of any professional, personal, financial or economic interests which might be considered relevant or conflicting with the subject of the report or with the country concerned by the report at the time of appointment in committee.

1.2. This declaration shall be recorded in the minutes of the meeting.

Article 2

2.1. Before speaking in committee or in plenary session on a subject on which they have a professional, personal, financial or economic interest which might be considered relevant or conflicting, members are encouraged to make ad hoc declarations of interest.

2.2. This not only serves transparency and is relevant for other members; it also makes colleagues and the general public aware of the members' experience on the subject concerned.

Article 3

3. Committees shall have the right to remove a rapporteur who failed to declare such interests or who made an untruthful declaration."

4. Code of Conduct for rapporteurs of the Parliamentary Assembly

517. Resolution 1799 (2011) introducing the Code of Conduct for rapporteurs of the Parliamentary Assembly stressed that the nature of rapporteurs' duties left them particularly exposed to political, economic or financial pressures, which could emanate from public authorities or private interests. The Assembly thus stressed the need for its rapporteurs to comply with certain rules of ethical behaviour and professional conduct in the exercise of their duties.

518. The text of the Code of Conduct for rapporteurs of the Parliamentary Assembly, which is reproduced in the compendium, in so far as relevant, provides as follows:

"1. Rules of conduct for rapporteurs:

1.1. principle of neutrality, impartiality and objectivity, including in particular:

1.1.1. undertaking not to have any economic, commercial, financial or other interests, on a professional, personal or family level, connected with the subject of the report, and obligation to declare any relevant interests;

1.1.2. undertaking not to seek or accept instructions from any government or governmental or non-governmental organisation, or pressure group or individual;

1.1.3. undertaking not to accept any reward, honorary distinction, decoration, favour, substantial gift or remuneration from a government or governmental or non-governmental organisation, a pressure group or an individual in connection with activities carried out in the exercise of their duties;

1.1.4. undertaking to refrain from any act which may cast doubt on their neutrality;

1.2. obligation of discretion, in particular the undertaking not to make personal use of information acquired in the course of their duties;

...

2. Rules applicable to the conduct of fact-finding missions:

2.1. undertaking that any fact-finding mission should be consistent with and take place within the framework of the rapporteur's mandate;

2.2. undertaking to act in a manner respectful of the laws and regulations of the country in which the fact-finding mission takes place.

3. Penalty for breaching the rules:

Should a rapporteur fail to honour one or more undertakings, the committee may withdraw his or her mandate and replace him or her.

4. Any appointed rapporteur shall be given a copy of the present code of conduct."

5. Conduct of members of the Parliamentary Assembly during Assembly debates

519. The rules regulating conduct of members of the Assembly during debates, further specifying the Rules of Procedure on the matter, were introduced by means of Resolution 1965 (2013), adopted by the Standing Committee, acting on behalf of the Assembly, on 22 November 2013. These rules, reproduced in the compendium, provide for a specific set of requirements concerning the manner in which debates in the Assembly are conducted.

6. Special rules on the title and prerogatives of Honorary President of the Parliamentary Assembly (extract)

520. The text of the document entitled “Special rules on the title and prerogatives of Honorary President of the Parliamentary Assembly (extract)”, as reproduced in the compendium, reads as follows:

“3. Former Presidents of the Parliamentary Assembly involved in representing and fostering another person’s or entity’s interests in the Parliamentary Assembly shall not, throughout the period of such activity, benefit from the prerogatives of the Honorary President of the Parliamentary Assembly as far as the distribution of documents and access to the buildings, the Chamber and meeting rooms are concerned.”

7. Special rules on honorary association with the Parliamentary Assembly (extract)

521. The document entitled “Special rules on honorary association with the Parliamentary Assembly (extract)”, as reproduced in the compendium, provides:

“3. Former members of the Parliamentary Assembly involved in representing and fostering another person’s or entity’s interests in the Parliamentary Assembly shall not, throughout the period of such activity, benefit from the prerogatives of the honorary associates as far as the distribution of documents and access to the buildings, the Chamber and meeting rooms are concerned.”

8. Guidelines on the observation of elections by the Parliamentary Assembly (extracts)

522. The Guidelines on the observation of elections by the Parliamentary Assembly were adopted by the Bureau of the Assembly on 24 May 2004 and updated several times: on 7 October 2005, 16 November 2006, 23 May 2007, 8 October 2010, 27 January 2012, 29 June 2012, 17 December 2012, 6 March 2014 and 5 March 2015.³⁸¹

523. The relevant part of the Guidelines, as reproduced in the compendium, reads as follows:

“F. Conflict of interest and code of conduct of members of ad hoc committees

18. Members of ad hoc committees for the observation of elections shall abide by the provisions of the Code of Conduct for members of the Parliamentary Assembly of the Council of Europe appended to Resolution 1903 (2012).

19. In particular, members of ad hoc committees, in the accomplishment of their pre-electoral, electoral or post-electoral duties, shall avoid conflicts between any actual or potential economic, commercial, financial or other interests on a professional, personal or family level and their election observation activity in the country concerned; if a member is unable to avoid such a conflict of interest it should be disclosed.

³⁸¹ Available at <http://website-pace.net/documents/10643/436801/GuidelinesElectionObservation-EN.pdf/81adc9f1-f750-4336-9a24-952da2f87506> (last accessed on 15 February 2018).

20. Members shall not request or accept any fee, compensation or reward intended to affect his or her conduct as a member of an ad hoc committee. They shall avoid any situation that could appear to be a conflict of interest or receiving an inappropriate payment or gift.

21. All candidates for membership of an ad hoc committee, at the time of putting forward their candidacy, shall make a written declaration of any actual or potential conflict of interest concerning them or members of their families, whether related directly or indirectly and/or with whom they are in regular contact, in connection with the country concerned by an election observation. In accordance with paragraph 14 of the Code of Conduct, they shall also register with the Secretariat of the Assembly any gifts or similar benefits (such as travel, accommodation, subsistence, meals or entertainment expenses) of a value in excess of 200 euros that they have accepted in the last twenty four months from the authorities of the country concerned, either directly or indirectly.

22. The aforementioned declarations shall be made available to the Bureau when it approves the composition of an ad hoc committee. Failure to sign such declarations shall disqualify the member concerned from being appointed to the ad hoc committee in question.

23. Members of an ad hoc committee shall refrain from engaging in public statements interviews, press conferences or communications via social networks which could contradict or conflict with the final assessment made by the ad hoc committee. This applies at all stages of the process: during the pre-electoral period, including in the context of a pre-electoral mission, during and following the election day, including in the context of a post-electoral mission.

24. Members of an ad hoc committee shall abstain from engaging in public activities which could appear to interfere in the electoral process or could be considered as partisan. This applies at all stages of the process: during the pre-electoral period, including in the context of a pre-electoral mission, during and following election day, including in the context of a post-electoral mission.

25. Additionally, the provisions stipulated in the Code of Conduct for rapporteurs of the Parliamentary Assembly (Resolution 1799 (2011)) shall apply mutatis mutandis to chairpersons of ad hoc committees over and above the provisions of the appendix to Resolution 1903 (2012).

26. Alleged breaches of paragraphs 18-21 and 23-25 above shall be dealt with in the manner prescribed in paragraphs 17 to 20 of the appendix to Resolution 1903 (2012).”

524. A form for declaring any conflict of interest on the part of candidates for election observation missions of the Parliamentary Assembly is appended to the Guidelines on the observation of elections by the Parliamentary Assembly. With regard to the term “similar benefits”, referred to in paragraph 21 of the Guidelines, the declaration contains a footnote defining them in the same manner as the declaration contained in the general procedure for registering gifts and similar benefits. The declaration form appended to the Guidelines is not reproduced in the compendium.

9. Code of Conduct for co-rapporteurs on the honouring of obligations and commitments by member States of the Council of Europe

525. The Code of Conduct for co-rapporteurs on the honouring of obligations and commitments by member States of the Council of Europe (hereinafter: “the Code of Conduct of the Monitoring Committee”) appears in Appendix H to the Progress report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring

Committee)³⁸² of 11 September 2001.³⁸³ The Code of Conduct of the Monitoring Committee is not reproduced in the compendium; nor is it directly referred to in the Rules of Procedure.³⁸⁴

526. The relevant part of the text of the Code of Conduct of the Monitoring Committee reads:

“B. Ethics of co-rapporteurs during the monitoring procedure

Neutrality

- co-rapporteurs must be totally independent and objective in respect of the state of which they monitor the honouring of obligations and commitments; this implies in particular that:

- . they should not have any interests – political, commercial, financial or other – in that state at personal, professional or family level;
- . they should not accept any instruction from the authorities of that state;
- . they should not accept any reward or honorary distinction from the authorities of that state;
- . they should abstain from any act, political or other, which might cast doubt, or be used to cast doubt, on their strict neutrality, in particular signing motions or written declarations concerning the state which they monitor.

Discretion

- co-rapporteurs should be aware that their task of monitoring obligations and commitments necessarily implies an obligation of discretion; consequently they should not in any way make public any of their conclusions, at least not before the authorities of the state concerned have had a fair opportunity to comment these.”

II. The 2017 ethical framework

A. GRECO’s assessment of the 2015 PACE Code of Conduct

527. At the request of the Chairperson of the Rules Committee of the Parliamentary Assembly, Ms Liliane Maury Pasquier (Switzerland), on 19 June 2017 GRECO³⁸⁵ provided expertise in assessing the Code of Conduct of members of the Parliamentary Assembly (see paragraphs 506-507 above), notably as regards the issues related to conflict of interest; declaration of assets, income, liabilities and interests; prohibition or restriction of certain activities; effectiveness supervision and enforcement mechanisms; and advice, training and awareness.³⁸⁶

528. GRECO found that the 2015 compendium on the Code of Conduct for members of the Parliamentary Assembly represented a regulatory framework which needed a number of improvements. It also found that although PACE had played a key role in promoting the need to regulate and increase the transparency of lobbying and third-party contacts, the latter were not properly and comprehensively regulated as regards PACE itself. Furthermore, GRECO stressed that supervision of the observance of the Code of Conduct was a particularly weak aspect of PACE’s

³⁸² See further on the establishment of the Monitoring Committee; Resolution 1115 (1997) of 29 January 1997 (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16526&lang=en>, last accessed on 15 February 2018).

³⁸³ Available at <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=9472&lang=en> (last accessed on 15 February 2018).

³⁸⁴ Which, in Appendix VII, refers to the text of Resolution 1115.

³⁸⁵ GRECO is the Council of Europe’s anti-corruption body. It comprises 48 European States, plus the United States of America. Its task is to monitor compliance of these States with the Council of Europe’s anti-corruption standards and the extent to which they are effectively implemented in practice.

³⁸⁶ Available at <https://rm.coe.int/assessment-of-the-code-of-conduct-for-members-of-the-parliamentary-ass/1680728008> (last accessed on 15 February 2018).

arrangements, which needed to be addressed by a far-reaching reform. GRECO also concluded that the rules on immunity of PACE members concerning both non-liability and inviolability should not be invoked to shield corruption-related offences, which needed to be determined by clear criteria. Lastly, GRECO stressed that PACE members were reportedly little aware of the existing integrity standards and that further effort on awareness raising was needed.

529. In the light of the above considerations, GRECO made the following set of recommendations:

“i. to consolidate and harmonise the various codes and guidelines on the conduct of PACE members in a single enforceable set of rules, so as to clarify the requirements and facilitate their effective implementation, and to provide for the regular review and update of these rules (paragraph 25);

ii. to review the rules on conflicts of interest to (i) increase their consistency and spell out clearly the consequences of disclosure and false statements and (ii) ensure that all PACE members (irrespective of their role) are required to make ad hoc disclosures as and when conflicts of interest arise (paragraph 30);

iii. (i) to establish a common system applicable to all PACE members for the declaration of financial interests, income, gifts and outside activities that is adequate to reflect the information required by PACE's integrity framework; and (ii) to consider widening the scope of disclosure to include information on spouses and dependent family members (it being understood that such information would not need to be made public) (paragraph 34);

iv. (i) as a matter of priority, to introduce a consistent and stricter set of rules, based on a clear prohibition in principle, and adequate definitions, concerning the acceptance of gifts, travel, hospitality and other benefits, as well as honorary distinctions and other rewards and (ii) to develop robust procedures for the reporting and valuation of gifts, and the return of those which cannot be accepted (paragraph 42);

v. (i) to ensure the effectiveness of the prohibition on PACE members engaging themselves in remunerated advocacy and lobbying activities and (ii) to introduce post-mandate employment restrictions, including a “cooling-off period” after a member of parliament ceases to be a PACE member and – in parallel – to abolish the automatic free access to premises and documents enjoyed by honorary PACE members (paragraph 45);

vi. to introduce a robust and consistent set of rules for PACE members on how to engage in relations with lobbyists and other third parties seeking to influence the parliamentary process, and in that context to extend to a broader range of PACE members the prohibition on instructions ((paragraph 51);

vii. to review the accounting standards for political groups so that i) they are required to report on permissible support from sources other than PACE's, including the use of such support, and to make the financial statements publicly available; ii) the annual accounts of all political groups are submitted to the External Audit (paragraph 54);

viii. to ensure that a coherent mechanism is in place for the effective and consistent supervision of compliance by PACE members with the rules of conduct – whether they are rapporteurs, election monitors, bureau members, chairpersons and heads of delegation or ordinary members, in particular by providing the oversight body/ies with adequate guarantees of operational independence and impartiality, with the necessary procedural tools, and the legal, information-gathering and other means, to perform their functions effectively. Consideration should be given to developing specific grounds and a detailed procedure for dismissing a President, if need be (paragraph 65);

ix. to ensure an effective, proportionate and dissuasive range of sanctions is in place for breaches of the various rules of conduct for PACE members, including those concerning the – yet to be established – system of declaration (paragraph 72);

x. to complement the existing rules on immunity with a set of clear and objective criteria (i) which would specify that immunities enjoyed as a PACE member shall not (be used to) shield PACE members

from corruption-related offences and (ii) which would ensure the fair and objective treatment of requests for the lifting of immunities whilst guarding against the consequences of ill-motivated proceedings (paragraph 79);

xi. (i) to ensure that all PACE members are properly informed and trained on the conduct expected from them and (ii) to provide explicitly and in respect of all PACE members for the possibility of individual confidential counselling on potentially problematic situations (paragraph 83);

xii. (i) to initiate consultations with a view to establishing a procedure for the Secretary General to handle allegations of corruption and fraud submitted to him/her under Rule 1327 in relation to PACE's work and persons other than staff members (for whom a procedure already exists under the existing Rule 1327) and (ii) to ensure that such persons are made aware of these mechanisms and have easy access to on-line information (paragraph 87)."

B. PACE Resolution 2182 (2017)

530. On 10 October 2017 the Parliamentary Assembly adopted Resolution 2182 (2017) entitled "Follow-up to Resolution 1903 (2012): promoting and strengthening transparency, accountability and integrity of Parliamentary Assembly members", which addresses concerns raised in GRECO's assessment of its 2015 ethical framework (see paragraphs 528-529 above) by providing for new rules of conduct and declaratory requirements to prevent corrupting behaviour in the Assembly in the future.

531. A comprehensive change has been made with regard to observance of the Code of Conduct. The relevant new section of the code now reads:

"1. Implementation of this code is the responsibility of the President of the Assembly, the Committee on Rules of Procedure, Immunities and Institutional Affairs and the Assembly, in accordance with the powers and responsibilities granted to them by the Rules of Procedure and this Code of Conduct.

2. If a member is believed to have acted in breach of the Code of Conduct, the President of the Assembly may seek clarification and further information from the member concerned, the chairperson of the member's national delegation, the chairperson of the member's political group or the chairperson of the member's committee. The President of the Assembly may rule on minor breaches of the Code of Conduct if the Committee on Rules of Procedure has not been called upon to consider the same facts.

3. The Committee on Rules of Procedure, Immunities and Institutional Affairs (hereafter "the committee") shall examine alleged breaches of the Code of Conduct by members of the Assembly brought to its attention by the President of the Assembly or by at least 20 members of the Assembly representing at least five national delegations (using the appropriate investigation request form). It may also start an investigation of its own motion.

4. The committee meets in camera and shall act with due respect for confidentiality:

4.1. if it decides to open an investigation, it shall notify the member concerned and send him or her a copy of the evidence submitted to it in support of the allegations, inform the member of his or her rights and request the member's preliminary observations;

4.2. it shall hear the member concerned together with any witnesses; the records of these interviews or hearings shall be confidential;

4.3. it shall give the member concerned, at all stages of the proceedings, the opportunity to comment on all the evidence gathered during the investigation in support of the allegations, including evidence that has led to identification of other rules that may have been violated; it may consider any evidence provided by the member concerned and hear any witness proposed by the member concerned who is able to provide evidence relevant to the investigation;

4.4. before finalising its conclusions, it shall give the member the opportunity to comment on the factual parts of the draft report.

5. Members shall co-operate with the committee at all stages of the investigation. They must disclose any information or documents requested.

6. If the committee finds that the allegations have no basis, it will inform the complainants and the member concerned.

7. If the committee finds that there has been a minor violation of the Code of Conduct, owing to negligence for example, it will inform the member concerned and ask him or her to take the necessary steps. The committee shall decide whether the decision shall be published on the Assembly's website.

8. If the committee finds that there has been a serious breach of the Code of Conduct, it will prepare a report containing all the evidence gathered in the course of the investigation, the observations of the member concerned, and its conclusions. This report will be published on the Assembly's website. The committee shall decide whether to impose a sanction and determine the appropriate sanction, in accordance with [the measures in the event of non-compliance with the Code of Conduct].

9. If the committee finds that acts or omissions being investigated could constitute a violation of the criminal law of a member State, it will notify the relevant national authorities. It may decide to suspend the proceedings in the Assembly if it turns out that the national authorities are conducting an investigation into the same facts."

532. In addition, with regard to the system of sanctions in the existing Code of Conduct, the Assembly decided to add a new paragraph on "Measures in the event of non-compliance with the Code of Conduct", which reads as follows:

"In cases of serious or repetitive breaches of the rules of conduct by a given member, the Committee on Rules of Procedure, Immunities and Institutional Affairs may take one or several of the following measures: temporary deprivation of the right to speak and to be enrolled on the list of speakers; temporary deprivation of the right to sign an amendment, a motion for a resolution or recommendation or a written declaration; temporary deprivation of the right to address questions to the Committee of Ministers; temporary deprivation of the right to be appointed rapporteur or temporary ban on acting as a committee rapporteur; temporary ban on being a member of an ad hoc election observation committee; temporary deprivation of the right to stand as a candidate for President of the Assembly or chairperson or vice-chairperson of a committee or sub-committee; and temporary deprivation of the right of institutional representation of the Assembly and its committees".

533. The Assembly further decided to strengthen the duty of integrity, accountability and transparency for its members. Pursuant to new Rule 6.2.b and the amended Rule 13 of the Rules of Procedure, PACE MPs will have to declare that they have read and understood the Code of Conduct and that they accept to abide by its provisions. Further changes were made to the Code of Conduct to the effect that MPs were not permitted to "promise, give, request or accept any fee, compensation or reward" intended to affect their conduct as members of the Assembly. Moreover, gift declaration forms submitted by MPs must be published on the Assembly's website. At the opening of each session of the Assembly, MPs will have to make a declaration of interests by means of the appropriate form, which will be published on the Assembly's website.

534. Changes were also made to the Code of Conduct for rapporteurs. Rapporteurs are now obliged to "declare any economic, commercial, financial or other interests, on a professional, personal or family level, connected with the subject of the report". A footnote to this provision explains that all candidates for rapporteurship must declare any interests which might be considered relevant or conflicting with the subject of the report or with the country concerned by the report at the time of appointment in committee, and that this declaration must be recorded in the minutes of

the meeting. Pursuant to paragraph 3 of the Code of Conduct for rapporteurs, should a rapporteur fail to honour one or more undertakings, in particular if he or she has failed to declare any relevant interests or made an untruthful declaration, the committee must withdraw his or her mandate and replace him or her. The rapporteurs may also be obliged to make known any contact with lobbyists. Accordingly, the committee can ask the rapporteur, or the rapporteur may decide himself or herself, to publish, in an appendix to the draft report, a list of individuals, experts and representatives of governmental or non-governmental organisations consulted, met or received in the process of drafting the report.

535. With regard specifically to the issues of transparency in relations with extra-institutional actors (lobbying), the Assembly decided that a specific identification of lobbyists, including the setting up of a register of lobbyists, together with a system for reporting improper conduct, would be established. In this connection, the rules on access to and movement within Council of Europe premises would also be revised. Former members of the Assembly, including former presidents, are now obliged to declare that they are not involved in “representing or fostering another person’s or entity’s interests in the Assembly”. Failure to declare any relevant interests or the making of an untruthful declaration will lead to the stripping of the prerogatives of an honorary member.

536. The Assembly decided that the amendments to the Rules of Procedure and complementary texts set out in Resolution 2182 (2017) should enter into force as soon as they were adopted. The new provisions on honorary association with the Assembly are applicable as from adoption to all former members of the Assembly who enjoy the status.

THE INVESTIGATION BODY’S ASSESSMENT

A. Introductory remarks

537. On the basis of evidence obtained in the course of its inquiry, and having regard to the allegations made in the NGO reports and to the concerns raised by different witnesses, the Investigation Body’s assessment has focused on four aspects of the alleged exertion of influence on the political processes in PACE in favour of Azerbaijan: (1) the various political activities in favour of that country; (2) the activities in the context of the election observation missions; (3) the exchange of gifts and different forms of benefits; and (4) the use of financial means and corruptive activities in influencing PACE’s work concerning Azerbaijan.

538. Before proceeding with this assessment, the Investigation Body finds it important to clarify certain aspects of the nature of its inquiry and the applicable legal standards for its different findings regarding the alleged improper influence on the political processes in PACE concerning Azerbaijan.

1. The nature of the Investigation Body’s inquiry

539. The Investigation Body considers it important to reiterate that it has no jurisdictional competence, its main task being to establish facts related to alleged improper influences on the various processes in PACE. The Investigation Body did not carry out a criminal or disciplinary investigation and its findings and conclusions should in no way be interpreted as prejudging the possible findings and conclusions of the relevant authorities in any criminal or disciplinary proceedings.

540. The Investigation Body further notes that it lacked some of the investigative powers normally enjoyed by criminal and disciplinary bodies investigating allegations of corruption. The work of the Investigation Body was limited to the collection of documentary and oral evidence from those involved in the events giving rise to the current investigation. In performing this role, the Investigation Body was dependent on the fullest cooperation of all those concerned.

541. As noted earlier in this report, the Investigation Body received such cooperation from the many witnesses who appeared before it. However, it notes with regret that several witnesses invited to give evidence to the body openly refused to cooperate or failed to reply to the body's repeated requests to appear before it, or to letters of clarification sent by the body, or provided explanations for failing to appear which lacked credibility or substantiation. A list of those who were summoned but failed or refused to appear before the body is set out in Appendix II to the report.

542. The list includes members and honorary members of PACE specifically referred to in the various reports, namely Mr Agramunt, Mr Suleymanov, Mr Muslum Mammadov, Mr Preda, Mr Lintner, Mr Hancock, and Mr Conde.

As to the specific case of Mr Agramunt, he was repeatedly summoned to appear before the Investigation Body via email and by registered letters (see paragraph 777 below). As noted in Appendix II, Mr Agramunt did not appear before the Investigation Body and belatedly offered to cooperate in writing. However, the body noted his persistent failure to respond to its communications and to comply with the deadlines set by it, and informed him that his belated offer to cooperate had come too late to be accepted by the body.

The Investigation Body finds, under section 23 of its terms of reference, a refusal on the part of these persons to cooperate with the body in carrying out its duties. It is a matter of regret that the failure of these persons to give evidence to the Investigation Body hindered the body in its establishment of the facts and in the conduct of its investigations.

543. Although Mr Volontè similarly declined to give evidence to the Investigation Body, the Investigation Body finds that his situation differed from that of the other persons summoned, in that the matters on which the body would have wished to question him were the subject of pending criminal proceedings against him in Italy. While it is unfortunate that the Investigation Body did not have the possibility to hear evidence from Mr Volontè, it does not make such a finding in his case.

544. The Investigation Body would further note that, although invited to appear before it to respond to the principal allegations that prompted the current investigation, the representative of the Republic of Azerbaijan to the Council of Europe declined the invitation.

545. In the absence of specific evidentiary rules or standards of proof governing the establishment and assessment of the facts, the Investigation Body took into account all information, written and oral, provided by witnesses appearing before it and by persons who contacted it through its secretariat, provided that the source of information was identifiable and that the information in question was relevant to its mandate, as defined in its terms of reference.

546. In reaching its conclusions, the Investigation Body did not consider itself bound by strict rules of evidence, assessing the relevance and probative value of each item of evidence before it and drawing such inferences as properly flowed from the facts which it found established during its inquiry.

2. The applicable legal standards for the Investigation Body's findings

547. In accordance with section 3 of its terms of reference, the Investigation Body examined whether any individual conduct by members or former members of PACE and/or any practices in the functioning of PACE that were subject to the body's present review fell short of the requirements set out in the Code of Conduct and other relevant codes of conduct (see paragraph 507 above). In particular, it examined whether any individual conduct and/or the relevant practices amounted to corruption and fostering of interests as the most serious forms of misconduct and the most damaging to the work and standing of the Assembly. Moreover, such forms of failure to observe the ethical standards normally imply, if proven in the relevant proceedings, criminal responsibility on the part of those concerned. On the basis of its findings, the Investigation Body has made certain recommendations to rectify shortcomings and fill the gaps in the Assembly's ethical framework.

548. The Investigation Body observes, however, that the Code of Conduct for members of the Parliamentary Assembly and other relevant codes of conduct are silent on the meaning to be given to the term "corruption" and "fostering of interests" as such. In the absence of such definitions, the Investigation Body has taken into account the meaning to be given to these concepts in the various sources cited in section 15 of its terms of reference and other relevant legal material.³⁸⁷

549. The Investigation Body notes, in particular, that the Criminal Law Convention on Corruption provides guidance on active and passive bribery of, amongst others, members of domestic and international parliamentary assemblies, as the key criminal conduct of corruption. Active bribery is considered to be intentional promising, offering or giving by any person, directly or indirectly, of any undue advantage to the public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions (Article 2). Passive bribery is considered to be the intentional requesting or receipt by any of the public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions (Article 3).³⁸⁸ In addition, Article 12 of the Criminal Law Convention on Corruption defines the concept of trading in influence as intentional promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of, amongst others, members of domestic and international parliamentary assemblies, irrespective of whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, irrespective of whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

550. Furthermore, the Civil Law Convention on Corruption defines the term "corruption" as requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof (Article 2).

551. It should also be noted that in its work on the integrity standards of members of parliament, GRECO places a particular emphasis on the prevention of conflict of interest. In this context, the term conflict of interest is understood to mean "a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective

³⁸⁷ See Appendix VI to the report.

³⁸⁸ See also Articles 4 and 10 of the Criminal Law Convention on Corruption.

performance of his or her official duties” (see paragraph 807 below). A similar definition of the term can be found in the relevant PACE code of conduct (see paragraph 511 above).

552. The meaning to be given to the concept of “lobbying” has been particularly addressed in a study carried out by the Venice Commission at the request of PACE (see paragraph 820 below). Lobbying is understood to include the oral or written communication by private individuals or groups, each with varying and specific interests, with a public official to influence legislation, policy or administrative decisions. The attempt to influence may or may not be successful. It is the act of those attempting to influence public officials that is essential. In addition to this definition, there are two further features of lobbying: (1) it is carried out by an extra-institutional actor, namely an entity or person who is not, in doing so, exerting public authority or fulfilling a constitutional mandate; and (2) it usually involves the lobbyists receiving directly or indirectly consideration for his or her services.

553. In its follow-up to the PACE work on lobbying, informed by the above-noted Venice Commission report, the Committee of Ministers in its Recommendation CM/Rec(2017)2 defined “lobbying” as a promotion of specific interests by communication with a public official as part of a structured and organised action aimed at influencing public decision making.

B. Activities in PACE in favour of Azerbaijan

1. The general functioning of PACE

554. PACE is a specific international parliamentary body that provides a forum for debate on various matters of interest and importance for the social, democratic and economic development and cooperation between the forty-seven COE member States. Although PACE does not have any direct legislative powers in the COE member States, its findings may have wide-ranging effects on various aspects of the political, legal and economic functioning of those States, and their perception by the international community as a whole. Moreover, PACE plays a key role in the elections of some of the highest judicial and political posts in Europe, most notably the judges of the ECtHR, the Secretary General of the Council of Europe and the Commissioner for Human Rights.

555. In performing these important functions, PACE is, like any other high-level national and international institution, susceptible to various forms of pressure and improper influence, including corruption. It would be wrong to assume that, since PACE activities might not have direct financial consequences within the member States, this risk is less real. Indeed, membership of PACE, and of the COE in general, is important for the image that the authorities of a particular State wish to project in the international community.

556. It is therefore important for the proper functioning of PACE, and the credibility of its member States, that the members of the national delegations are individuals of standing and integrity and are not susceptible to pressure and influence in their various activities. This is of special importance in the monitoring activities and other official missions that the MPs undertake on behalf of PACE in different COE member States. The Investigation Body heard worrying suggestions that some PACE members, due to their lack of political experience, may have become susceptible to pressure and other forms of improper influence, including those of a corruptive nature (see paragraph 277 above).

557. Another aspect of the PACE functioning that requires special mention is the manner in which some of the decision-making processes in PACE are organised and, in particular, the manner in

which the decisions on appointments to different positions within PACE are made. There is a general impression that such procedures lack transparency and regulation.

558. In this connection, the Investigation Body notes the evidence it received that the leaders of the political groups have considerable powers of patronage and influence in PACE. Their decisions are usually adopted in the Presidential Committee, which is a particularly important body as it controls the flow of information provided to the Bureau and is in charge of setting the agenda (see paragraphs 61-62 above).

559. This concentration of power and lack of transparency makes the leaders of the political groups susceptible to various forms of lobbying, pressure and undue influence. A telling example in this respect is the case of Mr Volontè, who was contacted by Mr Suleymanov and Mr Muslum Mammadov in his capacity as chair of the EPP group, and who appears to have exerted influence on some PACE MPs in their voting, notably on Mr Arieu (see paragraph 277 above). Again, some witnesses explained that they had voted against the Strässer report by simply following the line of their political group, namely the EPP (see paragraph 279 above).

560. The need to achieve transparency in the work and decision-making processes of the leaders of the political groups is particularly pressing in view of the important role that the political groups play in the appointment of members of the Monitoring Committee and the Rules Committee. As a witness explained, the fact that the political groups determined the composition of a committee reflected the political power in the Assembly. Moreover, it contributed to the fact that the reports prepared by such committees were adopted in the PACE plenary (see paragraph 64 above).

561. The Investigation Body notes that the Monitoring Committee is responsible for verifying the fulfilment of obligations assumed by member States under the terms of the COE Statute, the ECHR and other COE Conventions to which they are parties, as well as the honouring of commitments entered into by the authorities of member States upon accession to the COE. It is thus of central importance that the decision-making processes on the appointment of members to that Committee are transparent and sufficiently regulated so as to reduce the risk of any undue influence being brought to bear on the nomination of its members and, consequently, on the adoption of the reports on the countries under monitoring.

562. The same is true for the Rules Committee, which, according to the Assembly's new integrity framework, plays a key role in ensuring that the relevant ethical standards are respected by the MPs and which has the possibility to impose sanctions on those who fail to observe those standards (see paragraphs 531-532 above). It is therefore essential, in order to avoid any risk of arbitrariness and abuse of political power, including by means of lobbying and corruption, to ensure that the appointments to this Committee are transparent and sufficiently regulated and that the Committee performs its role in accordance with the relevant legal standards.

563. There are two further aspects of committee work that require particular mention: the appointment of rapporteurs and the voting in the committees.

564. As can be seen in the case of Azerbaijan, many of the concerns expressed about undue influence on PACE activities related to the appointment and conduct of rapporteurs on the various reports concerning that country. In particular, the procedures for the appointment of rapporteurs appeared to the Investigation Body to lack both transparency and regulation. This was evidenced by the fact that some members appeared as candidates for the rapporteurship at the last moment; some were unknown in their work in the Assembly; and some appear to have been appointed to the position of rapporteur for a specific report as a result of various initiatives being taken to ensure their appointment. Moreover, as described further below, the Investigation Body found that certain

rapporteurs failed to observe the rules on the absence of any conflict of interest, despite apparent links with the country concerned, or failed otherwise to carry out their role as rapporteur properly.

565. All of this has created or contributed to fears of improper influence on PACE's activities and given the impression of virtual impunity for various forms of inappropriate and unprofessional conduct of rapporteurs. In consequence, it has damaged the Assembly's reputation and, as it will be seen below, allowed those with various real or presumed links to the national authorities to continue with their work as rapporteurs.

566. In order to avoid this perception, the Investigation Body considers it important that transparent and sufficiently regulated procedures for the appointment of rapporteurs are put in place. Moreover, it is necessary to ensure that the principles related to the concept of a conflict of interest are made clear and are duly respected when MPs make declarations of the absence of such conflict. It is of paramount importance to ensure that robust and consistent procedures are in place for policing compliance with the rules on conflict of interest and for sanctioning breaches of those rules where they occur.

567. In this context, the Investigation Body considers that, in general, allegations of corruption and fostering of interests should be taken seriously and properly investigated and sanctioned by the different COE authorities and bodies in accordance with their respective competences. Any suspected instances of corruption and fostering of interests, such as those alleged by Mr Arif Mammadov and the COE and PACE officials (see paragraphs 90-95 above), require such a reaction. Where needed, the national authorities should be informed of possible breaches of national laws, in particular those of a criminal nature.

568. With regard to voting, concerns were expressed before the Investigation Body about the fact that voting in committees was confidential which, according to some witnesses, negatively affected the transparency of the political processes in PACE. It was also said that, since persons other than members of the committee might be present in the committee meeting room when voting was taking place, it was on occasions difficult to count the vote (see paragraph 68 above).

569. The Investigation Body in principle shares the view that the confidentiality of the vote in the committees may have negative implications for the requirement of transparency in the work of the committees. It may also open the door for improper influence being brought to bear on those taking part in the work of the committees. The voting system in the PACE plenary, which is fully transparent, was cited as a positive example to be followed in the work of the committees.

570. The Investigation Body, however, noted with concern the claim by some witnesses that governments had used the way in which MPs had voted in PACE to exert pressure on the authorities of the countries from which the MPs came and, consequently, on the MPs themselves. Such allegations were independently brought to the Investigation Body's attention by at least three unrelated witnesses: Mr Fischer, Mr Arif Mammadov and a member of the PACE secretariat (see paragraphs 216-217 above).

571. The Investigation Body finds no reason to discount the evidence of these witnesses. While it considers that, in the interests of transparency, the voting system adopted in the plenary would also be more appropriate in committees, this would need to be accompanied by effective safeguards against abuse in order to protect MPs in the performance of their duties.

572. As to the difficulties created by the presence of different persons in committee meetings during the counting of votes, the Investigation Body notes that, when the vote is narrowly split and the committee room is particularly full, the accuracy of the voting count may be affected and the risk

of improper lobbying activities increased. The Investigation Body heard evidence that this was the case in the vote in committee on the Strässer report.

573. The Investigation Body considers that effective procedures should be put in place to allow for a clear identification of those who have the right to vote in the committee and to safeguard against any attempts to falsify the vote in a committee meeting.

574. Lastly, the Investigation Body considers it important to note the crucial role played by the PACE secretariat in ensuring the proper functioning of PACE in general and the effective performance of its many specific activities. This was stressed by many witnesses heard by the Investigation Body.

575. The Investigation Body is of the view that members of the PACE secretariat must display the highest level of professionalism, integrity and neutrality in their work. In particular, they should refrain from any activities that may imply lobbying for a particular political cause or in favour of a specific outcome in a political process (see paragraph 98 above).

576. However, the expectation of neutrality and non-interference in the political processes on the part of members of the PACE secretariat must be accompanied by an effective possibility to report genuine suspicions about the behaviour of MPs, particularly when such suspicions relate to possible corruption and fostering of interests.

577. Such reports must be approached seriously and addressed properly, not only in the PACE secretariat itself but also by the relevant PACE bodies, and effective steps must be taken to protect members of the secretariat against any adverse consequences from reporting such suspicions. If proven to be justified, the necessary inferences must be drawn and, if appropriate, the relevant action taken to remove the source of concern. At the same time, the necessary protection of members of the PACE secretariat, from the perspective of whistleblowing, must be guaranteed both by the PACE secretariat hierarchy and by all other PACE entities.

2. Specific aspects of the functioning of PACE in matters concerning Azerbaijan

578. The Investigation Body's finds it established that, since Azerbaijan joined the COE, there has been a softening of attitude towards that country in PACE. Some have suggested that this was the result of ordinary political processes or "good diplomacy", while others considered that this was, at least in part, the result of improper influences being brought to bear.

579. The Investigation Body's primary concern is to establish whether this change in position was the result of such improper influences, in particular of corruption and fostering of interests. Many witnesses heard by the body and many NGOs considered that to be the case. Concerns were particularly raised over the different, often unexpected, appointments of persons with a favourable position towards Azerbaijan to various key positions in PACE and over their work on the matters concerning Azerbaijan. The Investigation Body has also heard substantial evidence, the credibility of which cannot be called into question, that when matters concerning Azerbaijan were discussed, many more persons than usual were present at various PACE meetings. Suspicion has therefore arisen that the activities in favour of Azerbaijan were orchestrated.

580. The Investigation Body finds that there is sufficient evidence to show that there was a group of persons working in PACE in favour of Azerbaijan. As will be seen from the discussion below, a certain level of cohesion in their various activities certainly existed, although it is difficult to establish with a sufficient degree of certainty that they all formed part of a single orchestrated structure.

581. The Investigation Body will first address the issue of possible improper influence by examining the activities in the various PACE entities. The activities in the context of election monitoring, which were a central theme of the NGO reports entitled “caviar diplomacy”, as well as the exchange of gifts and other forms of benefits, will be assessed separately. The Investigation Body’s findings concerning the use of financial means in influencing PACE’s work concerning Azerbaijan will lastly be addressed in a separate chapter.

(a) Activities in the Monitoring Committee

582. It follows from the NGO reports on the issue of caviar diplomacy, and the statements of witnesses heard by the Investigation Body, that a suspicion arose with regard to the work of the following rapporteurs in the Monitoring Committee: Mr Debono Grech, Mr Agramunt, Mr Iwiński, Mr Conde and Mr Preda.

583. With regard to **Mr Debono Grech**, the Investigation Body has been unable to obtain evidence, including in its questioning of Mr Debono Grech, of any unlawful or otherwise inappropriate activities on his part in favour of Azerbaijan. The fact that he seemed to have supported that country is not a matter to be judged by the Investigation Body. Nor is his alleged lack of initiative in the performance of his tasks or his readiness to follow the other co-rapporteur, Mr Agramunt, in itself a matter of concern to the body.

584. The only direct allegation of corruption against Mr Debono Grech was that made by Ms Yunus. However, when heard by the Investigation Body, Ms Yunus explained that she had no evidence for the assertion of corruption that she had made against him (see paragraph 104 above). The Investigation Body cannot therefore consider this allegation to be substantiated.

585. Although the election of Mr Debono Grech as a co-rapporteur in the Monitoring Committee on Azerbaijan forms part of the general problem of lack of transparency and regulation of the appointments to the positions of rapporteurs (see paragraphs 564-566 above), it cannot be established that his appointment was the result of inappropriate influence. As explained by Mr Herkel, the fact that Ms Christoffersen had been the first candidate for the post should not be seen as decisive. Mr Herkel stressed that he had in fact taken the post of rapporteur from Mr Agramunt in 2004 by obtaining a majority of votes in the Monitoring Committee, although Mr Agramunt had been the official candidate of the EPP.³⁸⁹ For his part, Mr Debono Grech explained that he had simply put forward his candidature and won the post in the Committee.³⁹⁰ In these circumstances, although it is unfortunate that Mr Debono Grech’s appointment was not accompanied by more transparency, there is no evidence on which to conclude that his appointment was the result of corruption and fostering of interests.

586. As to the work of **Mr Agramunt**, the Investigation Body notes that his failure to appear before it prevented it from establishing all the relevant facts concerning his involvement in the matters concerning Azerbaijan. However, the evidence obtained and facts established allow the body to conclude that in his activities in the Monitoring Committee he has acted contrary to the relevant ethical standards.³⁹¹

587. In particular, leaving aside the circumstances in which Mr Agramunt became the rapporteur on Azerbaijan in the Monitoring Committee, which could be viewed in the context of a general lack

³⁸⁹ Andres Herkel’s oral evidence (23 October 2017).

³⁹⁰ Joseph Debono Grech’s oral evidence (13 October 2017).

³⁹¹ Further findings on Mr Agramunt’s appointment and activities in PACE are set out below in the context of the identified corruptive activities concerning PACE (see paragraphs 739-745 below).

of transparency and regulation of the appointments in PACE (see paragraphs 105, 564 and 566 above), the available evidence suggests that while performing his duties as a rapporteur, Mr Agramunt made available to the head of the Azerbaijani delegation to PACE, Mr Seyidov, a confidential draft report prepared by the PACE secretariat on the findings of the Monitoring Committee on Azerbaijan. Moreover, it appears that he accepted suggestions made by the Azerbaijani delegation on the contents of that report. This follows from the documentary evidence inspected and the oral evidence heard by the Investigation Body (see paragraph 108 above). On the other hand, the Investigation Body did not hear evidence from Mr Agramunt in this respect and thus has no reason to call these findings into question.

588. The Investigation Body thus finds that Mr Agramunt failed to comply with the principle of neutrality, impartiality and objectivity as required under paragraphs 1.1.2, 1.1.4 and 1.2 of the Code of Conduct for rapporteurs of the Parliamentary Assembly (see paragraph 518 above) and the Code of Conduct of the Monitoring Committee (see paragraph 526 above). The Investigation Body also finds that **Mr Seyidov**, who made use of and provided comments on the draft report prepared by Mr Agramunt, failed to comply with the obligations under paragraph 5.1 of the PACE Code of Conduct (see paragraph 511 above).

589. With regard to **Mr Iwiński**, the Investigation Body notes at the outset that, as in the case of Mr Debono Grech, the appointment of Mr Iwiński as rapporteur on Azerbaijan in the Monitoring Committee does not in itself give rise to a conclusion of improper influence having been exerted by Azerbaijan. However, it falls under the general issue of lack of transparency and regulation of the appointments in PACE (see paragraphs 564-566 above).

590. The Investigation Body finds, however, that the available documentary and oral evidence shows that Mr Iwiński, when performing his duties as a rapporteur in the Monitoring Committee on Azerbaijan, received instructions, by way of a pre-prepared statement to be sent to the PACE Bureau on behalf of him and his co-rapporteur, Mr Conde, from Mr Goris,³⁹² one of the key lobbyists for Azerbaijan in PACE (see paragraphs 168-181 above). The Investigation Body therefore finds that Mr Iwiński breached the rules of conduct for rapporteurs under paragraphs 1.1.2, 1.1.4 and 1.2 of the Code of Conduct for rapporteurs of the Parliamentary Assembly (see paragraph 518 above) and the Code of Conduct of the Monitoring Committee (see paragraph 526 above).

591. The above findings are equally applicable to **Mr Conde**, who failed to appear before the Investigation Body. It is true that the email from Mr Goris was sent to Mr Iwiński alone and not to Mr Conde. However, the Investigation Body observes that Mr Conde was a co-rapporteur, who was jointly responsible for the drafting and contents of the statement, which was signed and presented in his name and in the name of Mr Iwinski. In these circumstances, the Investigation Body finds that Mr Conde, like Mr Iwiński, acted contrary to paragraphs 1.1.2, 1.1.4 and 1.2 of the Code of Conduct for rapporteurs of the Parliamentary Assembly (see paragraph 518 above) and the Code of Conduct of the Monitoring Committee (see paragraph 526 above).

592. With regard to **Mr Preda**, the Investigation Body found no direct evidence that he had solicited or had been subject to improper influence as a co-rapporteur on Azerbaijan in the Monitoring Committee. The allegation of corruption and conflict of interest made against him by Mr Ilgar Mammadov was not supported by any evidence other than the fact that there was allegedly

³⁹² The Investigation Body's findings concerning Mr Goris are set out further below in the context of the lobbying activities in PACE (see paragraphs 695-700 below).

a statue of President Heydar Aliyev in Bucharest (see paragraph 110 above). This in itself had no relevance to the allegations made against Mr Preda.

593. Nevertheless, the Investigation Body notes that a number of witnesses appearing before it expressed impressions and concerns as to the unusual behaviour of Mr Preda when visiting Azerbaijan as a co-rapporteur in the Monitoring Committee. For instance, according to the witness statements, he showed a personal interest in the country by even inviting the members of his family to accompany him on mission; the costs of his stay were covered in an unusual manner; he was not active in his work and he failed to attend a number of official events while at the same time moving around in the country outside the usual PACE protocol arrangements; and the diplomatic community in Baku considered that he had some business interests in the country (see paragraphs 111-112 above).

594. Mr Preda failed to respond to the requests to appear before the Investigation Body, which was unable to put these matters to him. The Investigation Body finds no reason to call into question the credibility of the witnesses who made the above statements or the accuracy of their description of the events. That being so, the Investigation Body finds that, irrespective of whether he was subject to improper influences in his work, Mr Preda failed to act as a responsible rapporteur by refraining from acts which may cast doubt on his neutrality, as required under paragraph 1.1.4 of the Code of Conduct for rapporteurs of the Parliamentary Assembly (see paragraph 518 above) and the Code of Conduct of the Monitoring Committee (see paragraph 526 above). Moreover, he has failed to undertake the fact-finding missions in the country in a manner consistent with the framework of his mandate as rapporteur, as required under paragraph 2.1 of the Code of Conduct for rapporteurs of the Parliamentary Assembly.

595. In the context of the Monitoring Committee's activities, the Investigation Body notes that **Mr Schennach**, the current co-rapporteur on Azerbaijan together with Mr Preda, acknowledged in his oral evidence given to the body that, in addition to being professionally interested, he was also personally very interested and active, and often very successful, in providing help and obtaining the release of political prisoners in Azerbaijan. He also stated that he was often in contact with, amongst others, Ms Yunus, who, for her part, stated that she had even received some draft resolutions from Mr Schennach for her comments (see paragraph 112 above).

596. In the Investigation Body's view, such involvement of Mr Schennach runs counter to the requirements of neutrality, impartiality and objectivity of the work of a rapporteur, as provided for in paragraphs 1.1.1, 1.1.2 and 1.1.4 and 1.2 of the Code of Conduct for rapporteurs of the Parliamentary Assembly (see paragraph 518 above) and the Code of Conduct of the Monitoring Committee (see paragraph 526 above). Moreover, in view of the continuing conflict of interest, when carrying out his other various activities in PACE concerning Azerbaijan, Mr Schennach failed to comply with paragraphs 5.1, 5.6, 8 and 9 of the PACE Code of Conduct (see paragraph 511 above).

(b) Activities in the Committee on Legal Affairs and Human Rights

597. The principal activity of the Committee on Legal Affairs and Human Rights related to Azerbaijan is its work on the issue of political prisoners in that country. In particular, two reports have given rise to controversy: the Strässer report, and the report prepared by Mr Destexhe under the title "Azerbaijan's Chairmanship of the Council of Europe: what follow-up on respect for human rights?".

598. The circumstances surrounding the activities on the former report will be subject to a separate assessment, given that the evidence obtained and the facts established show that improper

activities of a corruptive nature were influencing PACE's work.³⁹³ The Investigation Body's assessment in this part of the report is limited to the issues concerning the second report.

599. The evidence obtained by the Investigation Body showed that the Bureau did not initially wish to have a separate report on political prisoners in Azerbaijan. It appears that the motion to have a separate report was eventually accepted only upon the insistence of Mr McNamara, and the Committee on Legal Affairs and Human Rights was tasked with the matter (see paragraph 114 above).

600. The first rapporteur appointed to the report was Mr Agramunt. However, following his appointment to the position of PACE President on 25 January 2016, **Mr Destexhe** became the rapporteur (see paragraph 117 above).

601. While the appointment of Mr Destexhe as rapporteur suffered from the same lack of transparency and regulation already found (see paragraphs 564 and 566 above), there were, in the view of the Investigation Body, some distinctive features of his appointment which justifiably raise concerns. In particular, according to the available evidence, which the Investigation Body has no reason to call into question, Mr Destexhe, who was at the time chairman of the Committee and the person in charge of setting its agenda, had first delayed the appointment of a rapporteur on this report. Shortly before the Committee meeting in March 2016, he put the issue on the agenda and nominated himself as a candidate. As this was unexpected and no one else had applied for the position, Mr Destexhe was appointed rapporteur. At that moment he made a statement declaring that he had no conflict of interest (see paragraph 117 above).

602. The evidence obtained in the course of the Investigation Body's inquiry shows that Mr Destexhe was at that time, and still is, linked to Mr Goris, one of the key lobbyists for Azerbaijan in PACE (see paragraphs 695-700 below). In particular, Mr Destexhe and Mr Goris established in September 2010 the EAEO (see paragraphs 175-181 above). This organisation conducted various, often considered as sham, election observation missions to Azerbaijan, most notably during the 2010 parliamentary elections and the 2013 presidential election.

603. The evidence shows that Mr Goris and Mr Destexhe were in charge of ensuring the functioning of the EAEO. Although there is conflicting information on the period and extent of the involvement of Mr Destexhe in the work of the EAEO, the documentary evidence shows that the seat of the EAEO was registered at Mr Destexhe's address until September 2016 and that he co-signed a financial statement on behalf of the EAEO in December 2015 (see paragraph 178 above).

604. In this connection, the Investigation Body finds implausible the suggestion of Mr Destexhe and Mr Goris that all the activities on behalf of the organisation were carried out by Mr Goris without the involvement of Mr Destexhe (see paragraph 179 above). In the Investigation Body's view, it is highly unlikely that a leading political figure such as Mr Destexhe, who held different high-ranking positions at the domestic and international level, would have accepted that an organisation had a registered seat at his address without his having a sufficient link with and interest in its operation. It is equally difficult to accept that Mr Destexhe co-signed a financial statement on behalf of the EAEO without being informed of its activities and assuring himself of the accuracy of the document which he was signing.

605. Furthermore, the work of the EAEO had already been questioned by the ESI in its report of 2013. The ESI argued that it was a sham election-observation organisation tasked with providing legitimacy to the electoral processes in Azerbaijan and that it was financially supported by another

³⁹³ See paragraphs 725-738 below.

Azerbaijani lobbyist, Mr Lintner (see paragraph 22 above). In fact, at a later stage, and before the Investigation Body, Mr Goris accepted that the EAEO had received some support, in the form of travel and accommodation expenses, from Mr Lintner's organisation (see paragraphs 179-181 above). At the same time, there is clear evidence showing that Mr Lintner had received some funds from Azerbaijan (see paragraph 165 above).

606. In view of the above, the Investigation Body finds that at the time of his appointment as rapporteur in the Committee on Legal Affairs and Human Rights, Mr Destexhe had a conflict of interest in respect of Azerbaijan which he had failed to declare, as required under paragraph 1.1.1 of the Code of Conduct for rapporteurs of the Parliamentary Assembly (see paragraph 518 above).

607. In this connection, the Investigation Body reiterates that the concept of a conflict of interest covers not only the actual conflict of interest but also instances in which the existence of a special interest may appear to influence the performance of official duty (see paragraph 551 above). Moreover, pursuant to paragraph 8 of the PACE Code of Conduct, members must avoid conflicts between any actual or potential economic, financial or other interests on a professional and personal or family level on the one hand, and the public interest in the work of the Assembly on the other. Any conflict must be resolved in favour of the public interest and, if necessary, declared.

608. The Investigation Body accordingly finds that by failing to declare his links to the EAEO and the potential, real or apparent conflict of interest in matters concerning Azerbaijan, and by acting as a rapporteur irrespective of the existence of such a conflict of interest, Mr Destexhe acted contrary to paragraph 1.1.1 of the Code of Conduct for rapporteurs of the Parliamentary Assembly (see paragraph 518 above). Moreover, in view of the continuing circumstances of a conflict of interest, when carrying out his other various activities in PACE concerning Azerbaijan, Mr Destexhe failed to comply with paragraphs 5.1, 5.6, 8 and 9 of the PACE Code of Conduct (see paragraph 511 above).

609. As to the manner in which Mr Destexhe organised and carried out his visits to Azerbaijan, his approach to NGOs and the nature of his interference in the draft report prepared by the PACE secretariat concerning the situation in the country (see paragraphs 115-121 above), the Investigation Body finds insufficient grounds to conclude that, in addition to the conflict of interest related to his involvement in the work of the EAEO, Mr Destexhe was involved in other forms of unethical conduct.

(c) Activities in other committees

610. The controversies over the work of rapporteurs in other committees focused principally on the work of Mr Walter on the report "Escalation of violence in Nagorno-Karabakh and the other occupied territories of Azerbaijan" and the work of Ms Marković on the report "Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water". Both of those reports are generally seen as having been prepared in favour of Azerbaijan. However, only the latter was adopted in the form of a resolution, whereas the report prepared by Mr Walter was rejected in the PACE plenary (see paragraph 130 above).

611. With regard to the work of **Mr Walter**, the Investigation Body notes that when accepting the rapporteurship on the cited report in autumn 2014, Mr Walter made a statement declaring that he had no conflict of interest. At a later stage, he was reproached by the Armenians for having a conflict of interest due to the fact that his wife was Turkish. Mr Walter openly rejected the insinuation that this amounted to a conflict of interest. At a later stage, in May 2015, while he was still rapporteur on the report, Mr Walter himself became a Turkish citizen (see paragraph 131 above).

612. The Investigation Body notes that Mr Walter, when questioned by the body, accepted that his outlook on Azerbaijan as a Turkic country, which Turkey regarded as a brother country in the family of Turkic nations, was slightly different from that of other members of PACE (see paragraphs 131 and 153-156 above). Moreover, the evidence shows that in 2011 Mr Walter participated in a UK trade mission to Azerbaijan, which was organised by the Middle East Association (MEA), of which his wife was a senior executive. Mr Walter in his oral evidence stated that being a native Turkish speaker, and Azerbaijan being a Turkic country, his wife had been the obvious choice in the organisation to lead the mission (see paragraph 154 above).

613. Mr Walter further explained that, at the request of his wife, he had approached the head of the Azerbaijani delegation to PACE to see if he could facilitate some meetings with government departments in Baku. The head of the Azerbaijani delegation had suggested that if Mr Walter were present, the delegates would have meetings at a more senior level. Mr Walter had therefore accompanied his wife and the delegation to Baku where they had meetings with high-level government officials. According to Mr Walter, this mission had been fully supported by the British Embassy in Baku and its purpose was solely to promote British business in Azerbaijan. At the same time, he did not believe that he had had any direct connection with SOCAR during the time that the trade mission had been in Baku. SOCAR had only sponsored an energy conference which he had attended one morning (see paragraph 156 above).

614. In the Investigation Body's view, these facts leave no doubt as to the favourable approach of Mr Walter towards Azerbaijan. The link to Azerbaijan, through what Mr Walter accepted to be its strong ties to Turkey, would itself suffice to give rise to a conflict of interest at a personal and family level within the meaning of paragraph 1.1.1 of the Code of Conduct for rapporteurs of the Parliamentary Assembly (see paragraph 518 above). It notes, by analogy, that in the context of the Monitoring Committee's work, the existence of such a link would itself be sufficient to call into question the appointment of an MP as a rapporteur for a particular report (see paragraph 72 above).

615. In this connection, the concept of a conflict of interest must be understood in a wider sense, covering also instances in which the existence of a special interest may appear to influence the performance of the official duty (see paragraph 551 above).

616. Moreover, the Investigation Body further finds that, at the request of his wife, Mr Walter used his position as a PACE MP to advance her business mission to Azerbaijan and that he had himself taken part in that mission. As Mr Walter himself accepted, this allowed for the delegation led by his wife to meet high-level government officials in Azerbaijan. The Investigation Body thus finds that Mr Walter used his public office in a manner incompatible with paragraph 5.5 of the PACE Code of Conduct (see paragraph 511 above).

617. It also follows that, in addition to the existence of a conflict of interest of a personal and family nature already identified above, another fact existed that put into question the suitability of Mr Walter's acting as a rapporteur on matters concerning Azerbaijan, within the meaning of paragraph 1.1.1 of the Code of Conduct for rapporteurs of the Parliamentary Assembly (see paragraph 518 above). Similar to the above-noted conflict of interest of a personal and family nature, Mr Walter failed to declare the circumstances of his business trip to Azerbaijan when assuming the position of a rapporteur for that country, as required under the cited provision of the Code of Conduct for rapporteurs of the Parliamentary Assembly.

618. In view of the above, the Investigation Body finds that Mr Walter acted contrary to paragraph 1.1.1 of the Code of Conduct for rapporteurs of the Parliamentary Assembly (see paragraph 518 above). Moreover, in view of the continuing circumstances of a conflict of interest,

when carrying out his other various activities in PACE concerning Azerbaijan, Mr Walter failed to comply with paragraphs 5.1, 5.6, 8 and 9 of the PACE Code of Conduct (see paragraph 511 above).

619. As to the work of **Ms Marković**, the Investigation Body found no evidence to substantiate the accusation that she had been affected by corruption or other forms of improper influence of a financial nature.

(d) Other relevant activities

620. As noted above, the Investigation Body heard evidence from a number of witnesses raising concerns over the fact that some PACE MPs, during their missions to Azerbaijan, held meetings with the Azerbaijani authorities in the absence of members of the PACE secretariat. According to those witnesses, this happened in the case of a meeting between Mr Agramunt and President Aliyev; meetings between Mr Agramunt and Mr Iwiński, in their capacity as co-rapporteurs in the Monitoring Committee, and the President; meetings between the other co-rapporteurs in the Monitoring Committee, Mr Preda and Mr Schennach, and the head of the Presidential Administration in Azerbaijan; and a meeting between Mr Destexhe, as rapporteur in the Committee on Legal Affairs and Human Rights, and President Aliyev (see paragraphs 106, 120, 135 and 137 above).

621. The Investigation Body heard evidence that the practice of private meetings was not confined to Azerbaijan. Indeed, several MPs had had meetings with the authorities of other countries in private. As Ms Brasseur explained, the PACE staff members were usually present at the meetings with the authorities, but this was not always the case (see paragraph 136 above).

622. In these circumstances, the Investigation Body is unable to find that the mere fact that meetings between a PACE MP and the Azerbaijani authorities were held in private is in itself indicative of an improper purpose. Whereas, as Ms Brasseur explained, it is preferable that the PACE secretariat be present at the meetings, as this contributes to transparency in the work of MPs and reduces the risk of negative inferences being drawn, the Investigation Body cannot exclude that some meetings may need to be held in private.

623. In any event, in the Investigation Body's view, the reasons for the exclusion of a PACE secretariat member from a meeting which he or she should normally attend should be clearly made known to that staff member and recorded in the relevant reports of the meeting.

624. As to the concerns raised over the creation of a new political group in PACE, the Free Democrats Group, and the suggestion that this might be seen as an attempt to secure a stronger position for Azerbaijan in the governing structures of PACE (see paragraph 138 above), the Investigation Body would note that no evidence has been brought to its attention that the creation of the group was the result of corruption or fostering of interests. An allegation was, however, made of forgery and fraud in the context of the creation of the group. However, these are matters falling outside the scope of the Investigation Body's mandate (see paragraph 497 above).

C. The practical functioning of election observation missions

625. Several allegations of suspicious conduct on the part of members and former members of PACE in the context of election observation missions were made both in the published reports and in the evidence given to the Investigation Body (see paragraphs 289-475 above).

626. These allegations have been assessed under three broad headings: (1) the controversy over the purpose and methodology of PACE election observation missions; (2) the governance of the

PACE election observation missions; and (3) the participation of members and former members of PACE in election observation missions carried out on behalf of other organisations.

1. Controversy over the purpose and methodology of PACE election observation missions

627. The Investigation Body finds it established that, starting with the observation mission led by Mr Wille in the context of the 2008 presidential election (see paragraphs 303-311 above), there were strong disagreements within PACE about the position to adopt when observing Azerbaijani elections.

628. Certain MPs considered that PACE should adopt an intransigent stand with regard to Azerbaijan's human rights record in general, and that this stand should be maintained when observing elections. This group supported ODIHR's long-term approach, with a particular focus on whether issues relating to political prisoners, freedom of expression and freedom of assembly would mar the electoral process as a whole, irrespective of what might happen on election day itself. They believed that only ODIHR had sufficient capacity and expertise to make an effective and comprehensive assessment of the electoral process and therefore accepted that ODIHR would draft a preliminary statement in advance of election day. For the same reason, this group had strongly opposed the idea of PACE sending an election observation mission to the 2015 elections in the absence of ODIHR.

629. Other MPs considered that PACE should adopt a position based on constructive criticism in order to maintain dialogue with Azerbaijan and help the country advance at its own pace on the path towards becoming an established democracy. They believed that a confrontational stand with Azerbaijan was counterproductive and could lead to Azerbaijan leaving the Council of Europe. Some of those MPs, heard by the Investigation Body, displayed a clear distrust of ODIHR, suspecting it of political bias against former Soviet countries, including Azerbaijan, and criticising the lack of experience and qualifications of the observers deployed by ODIHR. This group considered that they should only assess what they had observed on election day and should not be forced to change that assessment for the sake of consistency with ODIHR's long-term assessment. They believed that, in any event, the monitoring mechanism put in place by PACE was adequate to assess the overall human rights situation in Azerbaijan and that the reports of the Monitoring Committee were sufficiently critical. Some witnesses considered that it was hypocritical to send short-term missions if, irrespective of what happened on election day, only the ODIHR long-term assessment would be taken into account. In 2015, this group was in favour of sending a PACE election observation mission in the absence of ODIHR, not only because of the policy of constructive criticism, but also because they considered that election observation was an essential element of the monitoring mechanism.

630. As to the decision to send an election observation mission in the absence of ODIHR during the 2015 parliamentary elections, the Investigation Body notes that nothing in the Guidelines prevented PACE from deploying such a mission where ODIHR had decided not to observe the elections. Moreover, in the absence of specific evidence of improper behaviour, and subject to its findings with regard to **Mr Iwiński's** and **Mr Conde's** conduct (see paragraphs 590-591 above), the Investigation Body has found no indication that the PACE members who had advocated and supported the deployment of the observation mission had breached any ethical rules.

631. That being said, it is a general understanding that, given their unique capability to conduct comprehensive long-term election observation missions and given the technical support that they provide to other delegations, ODIHR are clearly to be seen as a central element of any IEOM.

The Investigation Body therefore considers that any decision by ODIHR not to deploy an election observation mission, on the grounds of a lack of cooperation of the host country or an inability to reach an agreement with that country, would of itself cast doubt on the country's willingness to accept a comprehensive and fully transparent election observation process.

In addition, the absence of ODIHR would deprive smaller short-term election observation missions, such as those usually deployed by PACE, of the broader contextual analysis and the relevant statistical data, which are necessary for a fully informed assessment of the electoral process as a whole. Any decision by PACE to deploy a short-term election observation mission would thus run the inherent risk that any positive assessment of the conduct of the electoral process made by PACE, although limited to the voting and counting operations observed on election day, could be seen as lacking impartiality and give rise to allegations of corruption or of other improper influences. This risk would be magnified by the fact that, in the absence of ODIHR, it would be the PACE delegation, together with delegations of other international organisations, if any, which would give international legitimacy to the election observation process.

632. In this regard, and given the importance of appearances, the Investigation Body considers that in order to strengthen the political legitimacy of the election observation process, PACE should in principle refrain from deploying election observation missions if ODIHR decide for valid reasons not to deploy their own.

633. With regard to cooperation in the field with ODIHR and with other delegations belonging to the IEOM, the Investigation Body notes that well before the 2015 events, PACE cooperation with ODIHR had already been disrupted in the context of the 2013 presidential election, where the ad hoc committee led by Mr Walter had decided, together with the EP delegation, to issue a separate statement, provoking a *de facto* scission within the IEOM (see paragraphs 327-367 above).

634. Mr Walter explained to the Investigation Body that the decision to issue a separate statement was due to the fundamentally different approach to elections observation between himself, the majority of the ad hoc committee and the EP delegation on one side, and the OSCE/ODIHR and the minority of the ad hoc committee on the other side. The former were in favour of a more political approach based on "constructive criticisms" and short-term observation, the latter in favour of a strictly technical approach mostly based on long-term observation.

635. That decision had prompted allegations of lack of impartiality (see paragraph 336 above) and of lobbying (see paragraph 348 above) on the part of the ad hoc committee, and of a conflict of interest on the part of Mr Walter himself (see paragraphs 363-367 above).

636. Subject to its conclusions with regard to the conflict of interest in the case of Mr Walter himself (see paragraph 618 above), the Investigation Body is unable to conclude on the evidence before it that there was any improper behaviour on the part of other members of the ad hoc committee which observed the 2013 election. It finds that the mere fact that an hoc committee disagrees with ODIHR and decides to issue a separate statement does not of itself disclose any appearance of a violation of the PACE ethical rules.

637. However, for the reasons set out above (see paragraphs 631-632), the Investigation Body considers that the heads of the PACE election observation missions should use every endeavour to reach a common position with ODIHR and the other members of the IEOM.

638. As to the content of the preliminary statements and final reports issued by the ad hoc committees, the Investigation Body has noted various suggestions that those documents had been deliberately weakened in order to favour Azerbaijan. The Investigation Body is not in a position to judge whether the various statements and reports accurately reflected what had been observed during the observation missions, its role being confined to determining whether there is evidence that improper influences were brought to bear in the drafting of the statements or reports. The Investigation Body sets out below its specific findings relating to the conduct of the 2013 and 2015 missions. Subject to those findings, the Investigation Body finds no sufficient evidence on which to conclude that there was any breach of the ethical rules by members of the missions on account of the positions expressed in the preliminary statements and final reports.

2. The governance of PACE election observation missions

(a) Conflict of interest

639. The Investigation Body notes that pursuant to section F of the Guidelines, members of ad hoc committees for the observation of elections are required to abide by the provisions of the Code of Conduct. In particular, all candidates for membership of an ad hoc committee, at the time of putting forward their candidacy, are required to make a written declaration regarding the absence or otherwise of any actual or potential conflict of interest concerning them or members of their families, in connection with the country concerned by an election observation. Failure to sign such a declaration will disqualify the member concerned from being appointed to the ad hoc committee in question.

640. The Investigation Body has already concluded, with regard to **Mr Destexhe** (see paragraph 608 above), **Mr Schennach** (see paragraph 596 above) and **Mr Walter** (see paragraph 618 above), that there was a continuing conflict of interest with regard to Azerbaijan and that they had therefore failed to comply with paragraphs 5.1, 5.6, 8 and 9 of the PACE Code of Conduct.

641. With regard to Mr Destexhe those conclusions apply in the context of the 2015 parliamentary elections observation mission and the 2016 re-run of those elections in the Agdash district. With regard to Mr Walter, the conclusions apply in the context the 2013 presidential election. With regard to Mr Schennach the conclusions apply in the context of the 2016 re-run elections in the Agdash district, where he participated in his capacity as rapporteur of the Monitoring Committee.

642. The Investigation Body also notes that in the context of the 2015 elections, Ms Strenz did not declare any conflict of interest. However, in her written statements submitted to the Investigation Body on 11 November 2017 and 31 January 2018, Ms Strenz accepted that she had had business relations with Mr Lintner between November 2014 and January 2015 via his company Line M-Trade GmbH. However, she denied having known at that time that Line M-Trade GmbH had been receiving payments originating from Azerbaijan and stated that Mr Lintner had not mentioned any particular relationship with Azerbaijan. Ms Strenz also accepted that she had participated in a private election observation mission organised by Mr Lintner's Society for the Promotion of German-Azerbaijani Relations (GEFDAB) in the context of the 2010 parliamentary elections. Those elections were held on 7 November 2010 when Ms Strenz was already a member of PACE, which she had joined in January of the same year. She did not know who had paid for her travel and accommodation expenses and denied having received a fee for her participation in that mission.

643. Irrespective of whether Ms Strenz knew of the financing of Mr Lintner's foundation by Azerbaijan and of any business relations between Mr Lintner's company and Azerbaijan, when she was appointed as a member of the ad hoc committee for the observation of the 2015 parliamentary elections, she could not have been unaware of Mr Lintner's special relationship with Azerbaijan, if only on the basis of the name of his organisation.

The fact that she had participated in the 2010 election observation mission under the auspices of that organisation and that she had subsequently established a business relationship with Mr Lintner's company are sufficient for the Investigation Body to consider that she was in a conflict of interest that should have been disclosed ahead of the PACE 2015 mission.

644. By failing to do so, and in the light of the continuing conflict of interest when carrying out her other various activities in PACE relating to Azerbaijan, the Investigation Body finds that Ms Strenz failed to comply with paragraphs 5.1, 5.6, 8 and 9 of the PACE Code of Conduct (see paragraph 511 above).

(b) Other potentially inappropriate individual behaviour

(i) Meetings with the Azerbaijani authorities

645. It has been established that, during the PACE election observation missions, in particular the 2016 re-run elections in the Agdash district, some members of the ad hoc committees met with the Azerbaijani authorities, including, in private, at the highest levels.

The Investigation Body reiterates its findings (see paragraph 622 above) that the holding of such meetings is not of itself indicative of improper conduct.

Moreover, the Investigation Body further notes that participation in political meetings organised by the parliament of the hosting country and contacts in loco with members of that parliament appear to be anticipated under sections D-vii and C, respectively, of the Guidelines.

646. Subject to the other findings of the Investigation Body regarding the following persons, these conclusions apply in particular to Mr Destexhe, Mr Preda and Mr Schennach (see paragraphs 448-473 above) in the context of the 2016 re-run parliamentary elections in the Agdash district, and Mr Agramunt and Mr Destexhe, in the context of the 2015 parliamentary elections (see paragraph 438 above).

647. Specific allegations were made against Mr Destexhe in the context of the 2016 re-run elections, according to which he had wished to meet with President Aliyev in order to obtain an invitation to attend the Baku Grand Prix in the presidential lounge (see paragraph 454 above). However, the Investigation Body has not been presented with any evidence of either such a request or his presence at the Grand Prix. Mr Destexhe has consistently denied ever having attended the Grand Prix and even having any interest in Formula 1 races. Those allegations were thus of a purely speculative nature.

648. The Investigation Body further notes that Mr Destexhe's decision not to be accompanied by the head of the Council of Europe office in Baku, Ms Filipović, which prompted those speculations, should be put in the right context.

649. According to the evidence presented by members of the PACE secretariat itself (see paragraph 468 above), Mr Destexhe had been denied the secretariat's assistance in arranging the meeting on the grounds that such a meeting was not necessary in the context of the election observation mission. However, it appears that there had been no similar refusal to arrange such a meeting for Mr Schennach and Mr Preda. Mr Schennach explained that he had asked the secretariat

to arrange a separate meeting with President Aliyev as he had not wanted to participate in a meeting together with Mr Destexhe (see paragraph 466 above).

650. Whether this refusal was the cause of Mr Destexhe's subsequent behaviour, the Investigation Body considers unacceptable his aggressive and unprofessional treatment of Ms Filipović. However, it is unable to conclude on the evidence before it that his meeting with the President was improperly motivated or otherwise unethical.

651. With regard to Mr Preda, who has also been accused of having participated in the 2016 mission only because of the Grand Prix, again the Investigation Body has not been presented with any evidence to support those allegations.

(ii) Meetings with other actors

652. The Investigation Body notes that during the 2015 parliamentary elections, Mr Schwabe and Mr Schennach, accompanied by the staff member of the Venice Commission, held several secret meetings with about thirty political activists and relatives of imprisoned dissidents (see paragraph 401 above).

653. Secret meetings with political dissidents do not fall within the scope of section D-vii of the Guidelines and by their very nature cast doubts on the neutrality of the members of an ad hoc committee who engage in such meetings. The Investigation Body considers such activities to be incompatible with the principle in the Guidelines that members of an ad hoc committee should abstain from engaging in public activities which could be considered partisan.

(iii) Practical conduct of ad hoc committee meetings

654. Various members of the ad hoc committee were criticised for their conduct during the meeting which took place on 2 November 2015 in Baku, during the observation of the parliamentary elections.

655. The head of delegation, Mr Xuclà, was suspected of inappropriate behaviour in having produced a draft preliminary statement in suspicious circumstances, after refusing the assistance of the secretariat; for having circulated it to fellow members of the ad hoc committee too late for them to study it and make comments on it; and for not giving the floor to members of the ad hoc committee or to members of the PACE secretariat and of the Venice Commission who did not share his assessment of the elections. For several witnesses, this was seen as part of a deliberate attempt to exclude MPs who were critical of Azerbaijan, as well as members of the secretariat, in order to produce a statement which was favourable to Azerbaijan, a view said to be confirmed by the hostile and aggressive behaviour of certain members of the committee towards the members of the secretariat of PACE and the Venice Commission.

656. The Investigation Body accepts that the circumstances surrounding the drafting and distribution by Mr Xuclà of the draft preliminary statement were unusual and could well have given rise to suspicions of improper conduct on his part. His refusal of the secretariat's draft text and his account of how he was able to produce a draft of the statement in perfect English understandably gave rise to suspicions on the part of several witnesses that the document had been pre-prepared by others. However, the Investigation Body heard and examined evidence from Mr Xuclà that he had prepared the preliminary statement of the election observation mission himself on the evening of election day. He had then forwarded the text, part of which was in English, part in Catalan, to a party colleague in Spain who translated the parts in Catalan and language-checked the rest. This evidence was confirmed both by the email exchange between Mr Xuclà and his party colleague and by the

evidence received from that colleague, who appears to be fairly fluent in English and was at the time in a relationship with a British citizen (see paragraph 413 above). The Investigation Body considers this evidence to be credible and does not find the suspicions surrounding the drafting of the statement to be substantiated.

657. The Investigation Body is also prepared to accept Mr Xuclà's explanation of why he had the draft preliminary statement distributed in the morning of the following day, shortly before the meeting, rather than in the evening of election day. This had been due to the fact that he had had individual debriefing meetings with each of the observer teams as they returned from the polling stations, until very late in the evening. The time of the email exchange between Mr Xuclà and his party colleague in Spain is consistent with this explanation.

658. As to the allegations that Mr Xuclà had only given the floor to members of the ad hoc committee who shared his assessment of the elections, it appears that not only were the dissenting members able to express their views but the members of the PACE secretariat and of the secretariat of the Venice Commission were also given the floor, although only after the members of the ad hoc committee had spoken. The staff member of the Venice Commission accepted that he had even been allowed to present an amendment to the text, which was, however, rejected by the committee (see paragraph 407 above).

659. It is apparent from all the witness statements and the material evidence examined by the Investigation Body that there was a clear and heated dispute between the sixteen majority members of the ad hoc committee, on one side, and the seven minority members and the secretariat, on the other side. This divide appears to have been due not only to a disagreement about the assessment of the elections but also to confusion about the respective roles of the MPs, in particular the head of delegation, and the secretariat. Some MPs, including Mr Xuclà, Mr Preda, Mr Agramunt and Mr Destexhe, considered that they were in charge of the mission. They recognised the role of the Venice Commission's team as a legal adviser but believed that the PACE secretariat was only there to assist the ad hoc committee with logistics. Mr Xuclà explained to the Investigation Body that throughout his parliamentary life he had always drafted his texts himself and that he would not accept any conclusions prepared by the secretariat before the elections had actually taken place. Mr Destexhe considered that MPs had better experience when it came to elections than unelected civil servants.

660. On the other hand, the secretariat felt that they had a more substantial role to play than merely dealing with logistics and that it was an established practice, for instance, that they would produce the draft texts. However, as Mr Torcătoriu explained at his hearing of 6 November 2017, the head of delegation retained a total discretion with regard to those texts.

661. The Investigation Body considers that, given the confusion about the respective roles of the MPs and of the secretariat, the effect of such confusion on the orderly conduct of election observation missions and the consequent suspicions in the minds of those participating, PACE should consider amending the Guidelines in order to clarify the respective roles of the members of the ad hoc committees and of the secretariat, including by putting in place specific procedures for the conduct of the meetings and the production of the preliminary statements and final reports.

662. As for the personal behaviour of the individuals participating in those meetings, the Investigation Body emphasises that it should not overstep the boundaries of mutual courtesy and respect.

663. In light of the above, the Investigation Body considers that, apart from the disclosure of the draft preliminary statement to an outside person who was not part of the mission, which appears to

be in breach of paragraph 13 of the Code of Conduct (see paragraph 511 above), the way in which Mr Xuclà conducted the meeting of 2 November 2015 and the observation mission in general does not disclose any appearance of a breach of PACE's other ethical standards.

(iv) Observation of election day

664. Allegations have been made in respect of Ms Strenz in the context of the 2015 parliamentary elections observation mission.

665. Several witnesses reported that Ms Strenz had disappeared on election day and that she had been seen using a car not provided by or through the secretariat. Mr Schwabe recalled having seen Ms Strenz carrying shopping bags. He believed that she had not observed any polling stations. That view was shared by Mr Schennach, who recalled having seen her at a bar drinking champagne (see paragraph 434 above).

666. Ms Strenz explained to the Investigation Body that she had preferred to observe the elections alone, as she had been assigned to an area outside of Baku, whereas she had asked to be deployed only in Baku. She indicated that the secretariat had provided her with a list of polling stations in Baku and that she had observed about twelve polling stations using a taxi.

667. Whether Ms Strenz had used a taxi, a car directly provided by the Azerbaijani Parliament or another private vehicle, the fact that she did not use the means of transport provided by or through the secretariat does not of itself disclose any appearance of improper behaviour. Furthermore, it is not clear from the evidence before the Investigation Body whether Ms Strenz went on her own to monitor polling stations in Baku in agreement with Mr Xuclà and the secretariat, or otherwise. The Investigation Body finds in any event insufficient evidence to contradict her account of the events.

668. Nevertheless, the Investigation Body considers that, having regard to the conflict of interest with Azerbaijan that tainted Ms Strenz's participation in the observation mission in Azerbaijan (see paragraph 644 above), the circumstances of her activities on election day remain a matter of concern.

669. In the Investigation Body's opinion, an amendment to the Guidelines in order to clarify the respective roles of MPs and the secretariat during an election observation mission (see paragraphs 659-661 above) would help to prevent such a situation from arising and allay such concerns.

670. The Investigation Body finds that, contrary to the evidence of Mr Schennach (see paragraph 459 above), on election day Mr Destexhe had observed the polling stations in the Agdash district. It was alleged that he had spent only one hour doing so because he had wanted to return urgently to Baku in order to attend the qualifying round of the Grand Prix (see paragraph 457 above). However no evidence was adduced of Mr Destexhe's presence at the qualifying round of the Grand Prix and this allegation must therefore be considered of a speculative nature.

671. Moreover, as the memorandum presented by the mission had been drafted by the secretariat and then adopted by the members of the ad hoc committee without any changes, except the inclusion of some critical comments at Mr Schennach's request (see paragraph 449 above), it cannot be said that Mr Destexhe's behaviour during the mission, apart from praising the country for the fact that it was hosting the Grand Prix, had been particularly pro-Azerbaijan.

(v) Individual behaviour outside the official context

672. Allegations were made in respect of Mr Agramunt in the context of the 2015 election observation mission, according to which he had allegedly been bribed by being offered what appeared to be prostitutes (see paragraph 439 above).

673. The Investigation Body considers that those allegations are unsubstantiated. Assuming that Mr Agramunt had met prostitutes during his stay in Baku at the time, the Investigation Body finds no evidence on which to conclude that this had been part of a corruptive scheme.

674. With regard to the allegations about members of the ad hoc committees disappearing in the evening, not staying in the same hotels as other members of the delegation and the secretariat, or meeting with members of other observation missions, including former members of PACE, the Investigation Body does not consider that such conduct, in the absence of specific evidence of wrongdoing, discloses any appearance of a breach of PACE's ethical standards.

675. Nevertheless, in the light of the sensitive nature of election observation and of the many allegations of corruption and fostering of interest which have been directed at PACE's election monitoring, the Investigation Body considers that members of an ad hoc committee deployed in the context of an election observation mission should refrain from behaviour that could give room for suspicions or speculation about their neutrality.

3. Participation of members and former members of PACE in election observation missions on behalf of other organisations

676. The Investigation Body notes that there is nothing in PACE's ethical standards that prohibits members or former members of PACE from participating in election observation missions deployed by other organisations, be it OSCE-PA, ODIHR, PA-CIS, their respective national parliaments or NGOs, or other private organisations.

677. Nevertheless, the Investigation Body reiterates its concern that members of PACE, while on election observation missions on behalf of other organisations, should refrain from behaviour that could give room for suspicions or speculation about their neutrality.

D. Exchange of gifts and different forms of benefits in matters concerning Azerbaijan

678. The receipt of gifts, notably caviar, from the Azerbaijani authorities by PACE MPs and members of the secretariat was one of the principal themes of the 2012 ESI "caviar diplomacy" report, which was used to suggest that sinister motives had influenced the various PACE activities concerning that country (see paragraph 7 above). For its part, the Investigation Body established that various gifts were in fact received by the MPs and the secretariat but, in its view, the receipt of those gifts does not of itself suggest that they played any prominent role in PACE's activities concerning Azerbaijan.

679. Many witnesses saw the offers of gifts as a cultural custom in Azerbaijan and the Caucasus region in general, and considered that it was difficult to refuse such expressions of courtesy. Moreover, the gifts were in general symbolic and none of the witnesses stated that he or she had felt induced to act in a particular way by the grant of a gift. It is also striking that there was consistency in the statements of a number of witnesses that no particular importance was attached to these courtesy gifts, which were, for instance, simply shared with colleagues, thrown away, used in the office or otherwise deliberately disposed of and ignored (see paragraphs 144 and 149 above).

680. The only suggestion of a very valuable gift was made by Ms Doris Fiala in the media (see paragraph 150 above). However, when requested by the Investigation Body to provide further clarification, she failed to do so and simply referred to the statement that she had given to the media. In the light of the other evidence obtained as to the nature of the gifts received by other MPs and members of the secretariat, and in the absence of any further explanation by Ms Fiala, the Investigation Body is unable to conclude that the gifts in question had the special value as might have appeared to her.

681. The Investigation Body notes with concern the suggestion that in the context of the offers of gifts in Azerbaijan, the services of prostitutes were provided to MPs (see paragraph 151 above). However, it finds that, even if true, there is no clear evidence that such offers were made on the instruction or on behalf of the authorities.

682. As regards other benefits, such as invitations and travel to conferences and other events in Azerbaijan (see paragraph 152 above), save for its individual findings in relation to conflict of interest, the Investigation Body is unable to conclude, on the evidence before it, that such offers affected the requirements of neutrality in the work of PACE MPs, in particular the rapporteurs (see paragraphs 616-618 above).

683. Notwithstanding its findings above, the Investigation Body would stress the need for transparency in the receipt of gifts or benefits of any nature, as required under paragraph 14 of the PACE Code of Conduct and in accordance with the procedure set out in PACE's new ethical framework (see paragraphs 533-534 above). The Investigation Body finds it striking and artificial that only six declarations of gifts have been made so far in PACE. It notes that out of these six declarations, three were made on the same day and concerned gifts below the requisite value for an obligation of declaration to arise, which legitimately raises questions as to the genuineness of such declarations (see paragraphs 141-142 above).

684. The Investigation Body also finds disturbing the evidence that PACE MPs would not consider themselves to be bound by the rules on the declaration of gifts in PACE but only by the equivalent rules in their national parliaments (see paragraph 143 above). In the Investigation Body's view, the clear requirement in paragraph 14 of the PACE Code of Conduct, that any gift of the requisite value accepted in the performance of an MP's duties in the Assembly must be declared via the official channels in the Assembly, is designed to ensure the transparent and proper engagement of an MP in the work of the Assembly and must be respected by all those taking on the role as a member of PACE.

685. In this context, the Investigation Body would stress the importance of diligent observance by MPs of the rules on declarations of gifts and interests, as envisaged under PACE's new ethical framework, and the necessity for the relevant PACE bodies rigorously to monitor MPs' compliance with those requirements. Any failure to comply with these declarations should be identified and adequately sanctioned.

E. Use of financial means and corruptive activities to influence PACE's work concerning Azerbaijan

686. The Investigation Body has identified and established the existence of two principal forms of financial means to influence PACE's work relating to Azerbaijan. The first concerns remunerated lobbying activities carried out by extra-institutional actors, most of whom are former members of PACE, aimed at persuading PACE MPs to adopt a more favourable position towards Azerbaijan but

without the MPs' undertaking to act or refrain from acting in a particular way. The second concerns the use of money or other corruptive activities involving an unequivocal offering or giving, directly or indirectly, of any undue advantage or prospect thereof in exchange for such an undertaking.

687. In the present context, the Investigation Body has established that instances of lobbying have taken place, but such lobbying has not been found to have included such use of money or other corruptive activities. By contrast, the Investigation Body has found other instances where there is credible evidence of corruptive activities aimed at exercising direct or indirect influence seen as being in favour of Azerbaijan.

1. Lobbying

688. As already stressed above, the Investigation Body is of the view that several former PACE MPs took part in a more or less organised structure of lobbying activities in favour of Azerbaijan (see paragraphs 160-203 above). There is also conclusive evidence showing that in some cases the lobbying activity was remunerated, as set out below.

689. The evidence shows that one of the key lobbyists for Azerbaijan remunerated for his work from Azerbaijan was **Mr Lintner**. Many witnesses heard by the Investigation Body, whose evidence the body has no reason to call into question, stated that even as a PACE MP he had been very supportive of Azerbaijan (see paragraphs 161-162 above).

690. In this respect, the Investigation Body notes with concern that certain suspicious activities on the part of Mr Lintner, notably his frequent unexplained visits to Azerbaijan during his term of office in PACE, which came under scrutiny by the relevant PACE bodies, was not followed up by his national parliament, which flatly rejected an attempt by the PACE services to obtain the relevant information (see paragraph 161 above). While MPs must be free to travel wherever they wish and to hold different political opinions and support different positions, this does not mean, in the Investigation Body's view, that they are free to act without any accountability for their work, particularly if their activities raise a suspicion of improper influence being brought to bear upon them. Indeed, for instance, it is widely accepted that parliamentary immunity cannot be invoked in cases of suspected corruptive activities (see paragraphs 797, 813-815 and 826-827 below).

691. According to the evidence of bank transfers from Azerbaijan made through the same shell companies in the United Kingdom as those identified in the Volontè case (see paragraph 289 above), Mr Lintner received in the period between 2012 and 2014 some EUR 800,000. This evidence was obtained in the context of the Italian criminal investigation against Mr Volontè and was made available to the Investigation Body. The Investigation Body has no reason to call into question its accuracy or probative value.

692. Mr Lintner is reported to have explained that the money had come from an NGO in Baku run by Mr Suleymanov, the former PACE MP involved in the Volontè affair (see paragraph 279 above; see also paragraphs 206-212 above). As the Investigation Body has had no opportunity to hear evidence from Mr Lintner or Mr Suleymanov, it cannot independently confirm this information. It notes, however, that nothing has come to its attention to show that Mr Lintner has disputed such a report.

693. At the same time, the evidence shows that Mr Lintner, after leaving his office in PACE, often attended PACE activities in the PACE building and lobbied for the Azerbaijani cause (see paragraph 166 above). Moreover, as explained above, Mr Lintner runs an organisation often providing the services of election observation to the Azerbaijani authorities, as well as other services

for which he has recruited some PACE MPs, notably Ms Strenz. He is also close to another Azerbaijani lobbyist, Mr Goris, and his organisation has even provided support of a financial nature to Mr Goris's organisation on election observation.

694. In these circumstances, the Investigation Body finds that Mr Lintner, who performed lobbying activities for Azerbaijan while holding the status of an honorary PACE member and thus enjoying all the privileges attached to that status, including free access to the PACE building, acted incompatibly with his obligations as an honorary member, as provided for under paragraph 16 of the PACE Code of Conduct (see paragraph 511 above).

695. The Investigation Body finds on the evidence that a pivotal figure in the lobbying scheme in favour of Azerbaijan was **Mr Goris**.

696. The evidence given by a number of witnesses, both MPs and members of the PACE secretariat, shows that Mr Goris was often seen in the PACE building and at PACE-related events when matters concerning Azerbaijan were being discussed (see paragraph 170 above). There is also direct evidence given by Mr McNamara, which the Investigation Body finds credible, according to which Mr Goris tried to influence Mr McNamara's opinion and position on Azerbaijan by inviting him to visit the country on a fully-paid trip (see paragraph 257 above). This, in the Investigation Body's view, clearly involved a lobbying activity as understood in the relevant legal documents (see paragraphs 552-553 above).

697. Furthermore, the Investigation Body notes that it has already found above that Mr Goris provided instructions to the co-rapporteurs on Azerbaijan in the Monitoring Committee, Mr Conde and Mr Iwiński, on the terms of a statement to be submitted to the Bureau relating to the 2015 parliamentary elections in Azerbaijan (see paragraphs 589-591 above). Mr Goris also discussed the confidential Strässer reports with Mr Muslum Mammadov and Mr Suleymanov, and his email was forwarded to Mr Volontè for his perusal. In addition, there is clear evidence showing that he worked for Mr Mammadov, who explained in an email to Mr Volontè that he would ask Mr Goris to draft a letter to be sent by Mr Agramunt in the context of his candidature for the post of EPP President (see paragraphs 279-280 above). Moreover, as described above, Mr Goris was the key person in organising election observation missions to Azerbaijan through his organisation EAEO, which was widely considered to be a sham organisation supporting the authorities, and which involved both serving and former PACE MPs.

698. In this connection, the Investigation Body notes that there is evidence, not disputed by Mr Goris, that the organisation run by him and Mr Destexhe, the EAEO, received support from Mr Lintner's organisation in that the organisation met the cost of travel expenses and hotels for election observation in Azerbaijan (see paragraphs 180-181 above). At the same time, Mr Lintner, as already noted above, received funding from Azerbaijan (see paragraph 691 above).

699. In the Investigation Body's view, it is clear that the receipt of benefits, such as those provided by Mr Lintner's organisation, had a financial value and amounted to a form of financial support for Mr Goris's organisation. Seen against this background, the Investigation Body finds it established that Mr Goris's frequent presence in PACE was in large part for the purpose of lobbying on behalf of Azerbaijan. The Investigation Body cannot accept as credible Mr Goris's suggestion that his presence in PACE was exclusively or primarily for the purpose of participating in the activities of a residual mechanism of the Western European Union (ESDA) (see paragraph 170 above).

700. It follows from the above that Mr Goris, who performed lobbying activities for Azerbaijan and while holding the status of an honorary PACE member and thus enjoying all the privileges of that status, including free access to the PACE building, acted incompatibly with his obligations as an

honorary member, as provided for under paragraph 16 of the PACE Code of Conduct (see paragraph 511 above).

701. The Investigation Body finds on the evidence that **Mr Laakso**, a former Finnish MP in PACE, was another lobbyist for Azerbaijan in PACE.

702. The evidence on the use of honorary badges of PACE MPs shows that Mr Laakso entered the PACE building seventy-nine times in the period between 2015 and 2016. According to a number of witnesses, the reason for his presence in the building was to lobby in favour of Azerbaijan (see paragraphs 183-185 above).

703. According to the evidence given by Mr Lindblad, which the Investigation Body found to be credible, Mr Laakso had acknowledged that he was on the Azerbaijani payroll (see paragraph 185 above). Moreover, Ms Christoffersen gave evidence, which the Investigation Body also finds credible, that in the context of her candidature for the position of rapporteur on Azerbaijan in the Monitoring Committee, she had been contacted by Mr Laakso and advised that she should not run for that position (see paragraph 184 above).

704. In these circumstances, the Investigation Body finds that Mr Laakso, who performed lobbying activities for Azerbaijan while holding the status of an honorary PACE member and thus enjoying all the privileges of that status, including free access to the PACE building, acted incompatibly with his obligations as an honorary member, as provided for under paragraph 16 of the PACE Code of Conduct (see paragraph 511 above).

705. The Investigation Body finds that another former PACE MP who carried out lobbying activities in favour of Azerbaijan was **Ms Woldseth**.

706. The Investigation Body heard evidence from several witnesses, notably Ms Christoffersen and Ms Ingjerd Schou (Norway), that Ms Woldseth worked as a lobbyist in PACE in favour of, amongst others, Azerbaijan (see paragraph 189 above). The Investigation Body has no reason to doubt the credibility of the statements of these witnesses. This is particularly true in view of the clear evidence showing that Ms Woldseth very frequently visited the PACE building using her honorary member's badge (see paragraph 190 above).

707. The statement given by Ms Woldseth is both inconsistent and contrary to this electronically recorded evidence.

708. Although there is no evidence that Ms Woldseth received any remuneration for her work, the Investigation Body finds the above circumstances sufficient to conclude that Ms Woldseth, who performed lobbying activities, including those for Azerbaijan, while at the same time holding the status of an honorary PACE member and thus enjoying all the privileges of that status, including free access to the PACE building, acted incompatibly with her obligations as an honorary member, as provided for under paragraph 16 of the PACE Code of Conduct (see paragraph 511 above).

709. Information on the lobbying activities within PACE in favour of Azerbaijan was brought to the Investigation Body's attention by **Mr Lindblad**, a former Swedish MP in PACE and a former lobbyist for Azerbaijan.

710. Mr Lindblad provided comprehensive and detailed evidence to the Investigation Body concerning his lobbying work in PACE in favour of Azerbaijan. His oral evidence is supported by the relevant documentary material and other publicly available sources, and was independently verified by the questioning of a member of the PACE secretariat who had knowledge of Mr Lindblad's recruitment as a lobbyist for Azerbaijan. The Investigation Body therefore finds the evidence given by Mr Lindblad to be reliable.

711. It follows from that evidence that the main reason for his recruitment as a lobbyist for Azerbaijan was the fact that during his term in PACE he had supported Azerbaijan concerning issues related to the Nagorno-Karabakh conflict with Armenia. After his term in office in PACE had expired in 2010, it was this issue for which he was recruited by the Azerbaijani lobbying organisation, TEAS.

712. The Investigation Body finds it significant that the other former PACE MPs who subsequently became lobbyists for Azerbaijan had also been supportive of Azerbaijan in the Assembly during their term in office (see paragraphs 161, 170 and 183 above). This would suggest that their recruitment as lobbyists was not a matter of coincidence but rather a deliberate and structured approach to the recruitment of lobbyists in PACE.

713. Such a conclusion is supported by the circumstances in which Mr Lindblad was recruited for TEAS. According to his evidence, he was recruited in 2010 by Ms Eliza Pieter, who had worked as a secretary in the PACE Committee on Political Affairs and Democracy in 2006. She was a temporary staff member employed on a short-term contract, replacing another staff member who was on maternity leave. The evidence shows that she was an executive officer of TEAS.

714. Mr Lindblad considered that Ms Pieter had recruited him because she knew of his political position on the Nagorno-Karabakh issue. It appears that Ms Pieter first obtained the relevant knowledge on the political activities of Mr Lindblad in PACE, that she retained this knowledge and that, some four years after her departure from the PACE secretariat and at about the time when Mr Lindblad was finishing his term in PACE, she approached him with an offer of engagement for TEAS.

715. In the Investigation Body's view, the above circumstances suggest a high degree of organisation and planning in the recruitment of former PACE MPs as lobbyists in favour of Azerbaijan. A lack of adequate safeguards in PACE at that time certainly contributed to this. It is to be hoped that PACE's new ethical framework, which requires all honorary members to make a declaration of the absence of a possible conflict of interest if they wish to keep their honorary status, and the establishment of a register of lobbyists (see paragraph 535 above), will discourage any such activities that undermine the proper functioning of the political processes in PACE.

716. The Investigation Body also notes that Mr Lindblad confirmed having come to the PACE building as a lobbyist of TEAS to perform lobbying work in favour of Azerbaijan. He explained that he had not been asked to offer anyone any bribe or benefits but simply to promote Azerbaijani interests in the discussions with other politicians. His activities therefore amounted to standard lobbying, as understood in the legal instruments referred to above (see paragraphs 552-553 above).

717. It follows that Mr Lindblad, who performed lobbying activities for Azerbaijan while holding the status of an honorary PACE member and thus enjoying all the privileges of that status, including free access to the PACE building, acted incompatibly with his obligations as an honorary member, as provided for under paragraph 16 of the PACE Code of Conduct (see paragraph 511 above).

2. Corruptive activities

(a) The general context

718. The Investigation Body notes that serious allegations of corruptive activities in PACE on the part of Azerbaijan were made by Mr Arif Mammadov, former ambassador of that country to the COE. The Investigation Body, having had no possibility to question the individuals identified by Mr Mammadov as being the key figures involved, is unable to objectively confirm those specific allegations. However, the Investigation Body found Mr Mammadov to be a credible witness and is of

the view that his evidence can, on the whole, be treated as reliable. That being said, the Investigation Body is mindful of the fact that Mr Mammadov is a political opponent of the current authorities of Azerbaijan and that his evidence must be seen in that context.

719. The Investigation Body notes that the person identified by Mr Mammadov as the key provider of funds for the corruptive activities, Mr Kamaladdin Heydarov, who is the Minister of Emergency Situations of Azerbaijan and father of the director of the European-wide lobbying organisation for Azerbaijan, TEAS, is also the person mentioned by another well-known political dissident with knowledge of the circumstances in Azerbaijan, Ms Yunus (see paragraphs 213-214 above).

720. No clear link has been established between Ms Yunus and Mr Mammadov and there is no indication that their statements had been coordinated or pre-prepared. In addition to the name of Mr Heydarov, Ms Yunus also referred to a person from the Presidential Administration of Azerbaijan. The Investigation Body heard evidence from the former head of the COE office in Baku, who stated that she had also heard, wholly independently of Mr Mammadov and Ms Yunus, of the two names being mentioned in this context.

721. Mr Mammadov gave evidence that Mr Suleymanov and Mr Muslum Mammadov, both former PACE MPs from Azerbaijan, had been the key persons in charge of the corruption activities in PACE. Indeed, the Investigation Body notes that their names have appeared in the context of the criminal proceedings conducted in Italy as being the sources of funds transferred to Mr Volontè (see paragraph 279 above). Mr Suleymanov, in particular, was also seen by a number of witnesses, both MPs and members of the PACE secretariat, as having a key role in the promotion of Azerbaijani interests in PACE. In this connection, it should also be noted that Mr Muslum Mammadov was a declared lobbyist and director of the Azerbaijani lobbying organisation, OCAZ, with which other MPs were found to have links (see paragraphs 212-214 above).

722. Various suggestions were made as to the manner in which the money had come into the hands of Mr Suleymanov and Mr Muslum Mammadov. Mr Arif Mammadov stated that Mr Suleymanov had at his disposal a special fund worth some EUR 30 million, while Ms Yunus also suggested that students from Azerbaijan had brought cash to Mr Suleymanov in Strasbourg. The Investigation Body has not been able independently to confirm these allegations. It finds it sufficient to note that the revelations in the Italian criminal case clearly show that Mr Suleymanov and Mr Muslum Mammadov were capable of directing the distribution of significant amounts of money from Azerbaijan to individual bank accounts (see paragraphs 279-280 above).

723. As to the suggestions that Mr Laakso and Mr Goris, as two of the lobbyists for Azerbaijan (see paragraph 218 above), had distributed envelopes containing cash within PACE, the Investigation Body notes that these remained at the level of allegations. No sufficient evidence was provided to the Investigation Body to enable it to consider these allegations as substantiated.

724. Against this general background, the Investigation Body will assess the allegations that, in two specific instances, money was used and corruptive practices on the part of Azerbaijan played a role within PACE. The first relates to the case of Mr Volontè and his involvement in the Strässer affair, and the second concerns the various appointments of Mr Agramunt.

(b) The case of Mr Luca Volontè

725. The allegations concerning Mr Volontè's corruptive activities relate to his involvement in the Strässer affair. Before proceeding with its assessment of the conduct of Mr Volontè, the Investigation Body would make the following general observations concerning the defeat of Mr Strässer's report on the issue of political prisoners in Azerbaijan, which is seen by many as a prime example of success on the part of the supporters of Azerbaijan in PACE.

726. In the Investigation Body's view, the defeat of the Strässer report was due to several factors. The Investigation Body notes in the first place that it is clear that lobbying was carried out by both supporters and opponents of the Azerbaijani cause in PACE for their respective positions on the Strässer report (see paragraph 254 above). It is not possible to ascribe improper motives to either camp in their support for or opposition to the adoption of the report.

727. Moreover, although the work of Mr Strässer on the report was hampered by the regrettable refusal of the Azerbaijani authorities to grant him a visa to enter the country (see paragraphs 245-246 above), it should be noted that Mr Strässer acknowledged that he had participated in certain activities which could be seen as his having taken a position on the matter of political prisoners in Azerbaijan before the adoption of his report (see paragraph 242 above). In addition, in general, he was seen by many witnesses as an outspoken critic of Azerbaijan (see paragraph 241 above). In the Investigation Body's view, this might well have caused those who were supporters of Azerbaijan to view his report with suspicion.

728. As to the involvement of Mr Volontè in the Strässer affair, the Investigation Body notes that a number of witnesses before it had not seen him as a key figure working in support of the Azerbaijani cause when the voting on the Strässer report had taken place (see paragraph 274 above). On the other hand, Mr Strässer stressed that Mr Volontè had been clear that he was against the report and that the EPP group, which he had chaired at the time, would also be against it. In this respect, according to Mr Strässer, he had not accepted any opposition within the group. Mr Walter had also seen Mr Volontè at the time as one of those working to undermine the Strässer report (see paragraph 276 above).

729. Confirmation of the active and decisive role played by Mr Volontè in the defeat of the Strässer report came from the evidence given by Mr Arieu, which the Investigation Body considers, on the whole, to be reliable as it finds support in the material evidence in the Italian criminal case file concerning Mr Volontè.

730. In particular, Mr Arieu stated that at the time when the Strässer report had been discussed he had recently joined PACE and had already been approached by Mr Suleymanov, who tried to convince him to vote against the report. At the same time, Mr Volontè had also approached Mr Arieu and recommended that he vote against the Strässer report. According to Mr Arieu, the same position had been adopted at the meeting of the EPP group, in which Mr Volontè had explained that it was better to vote against the Strässer report and to vote for the report by Mr Agramunt and Mr Debono Grech (see paragraph 277 above).

731. The Investigation Body accordingly finds that Mr Volontè played an important role in undermining the Strässer report. His role was all the more important given that as President of the EPP, he was able to shape the political position of the entire group. Indeed, evidence was heard from several witnesses that the vote against the Strässer report and in favour of the Agramunt/Debono Grech report was seen as a vote along the political lines. Thus, for instance, Mr Mariani stated that he had voted against the Strässer report simply because he had followed the political line of the EPP group (see paragraph 279 above).

732. The Investigation Body notes that emails disclosed in the Italian case file show that Mr Volontè had various contacts on the issue of the Strässer report with Mr Muslum Mammadov and Mr Agramunt several months before the vote on the report. In particular, in June 2012 Mr Volontè and Mr Mammadov had had an exchange over the Strässer report in which Mr Mammadov had thanked Mr Volontè for his letter to the EPP, adding “This is great! Of course, I keep it confidential”, which clearly suggests that Mr Volontè had been working on influencing the EPP in coordination with Mr Mammadov, who was at the time a lobbyist for Azerbaijan but not yet a PACE MP.

733. Further relevant contact between Mr Volontè and Mr Muslum Mammadov took place on 15 December 2012. On that occasion, Mr Volontè had advised Mr Mammadov as to how to proceed in order to put “friends” in the right positions and undermine the Strässer report. Two days later, on 17 December 2012, Mr Volontè received the first payments from Azerbaijan through UK shell companies, apparently on the instruction of Mr Suleymanov, as Mr Volontè himself acknowledged during an interview on Italian television (see paragraph 27 above).

734. The Strässer report was eventually defeated on 23 January 2013. In the meantime, Mr Volontè had had further exchanges with Mr Muslum Mammadov concerning the issue of the report, and on 27 December 2012 he had received another payment through the shell companies. Six days after the Strässer report was defeated, on 29 January 2013, Mr Volontè sent an email asking Mr Suleymanov whether he had forgotten about him “after [his] victory ...”. Mr Suleymanov answered that he was sure that he would surprise Mr Volontè with the respect he had for him. Then, on 19 March 2013, Mr Volontè received a further payment from Azerbaijan through the UK shell companies, again seemingly on the instructions of Mr Suleymanov. Mr Volontè received a further eighteen periodic payments through the same channels in the periods between 10 July and 31 December 2013, and 23 January and 31 December 2014 (see paragraph 289 above).

735. Meanwhile, Mr Volontè had had an exchange with Mr Muslum Mammadov over his motion for a resolution on the “monitoring [of] political prisoners in all Council of Europe member States”. In particular, he forwarded to Mr Mammadov an email in which he had sought to withdraw the motion and stressed that every desire of Mr Mammadov was an order for him and that the matters concerning that motion should be discussed with Mr Suleymanov and another person, apparently Mr Pushkov, Chair of the Russian delegation to PACE (see paragraph 279 above).

736. As already noted, the Investigation Body did not have an opportunity to hear evidence from Mr Volontè. It notes, however, that in the Italian television programme, he suggested that the payments had been made by Mr Suleymanov in relation to a consultancy contract which he had made with him. According to Mr Volontè, the consultancy contract had been signed for a period of ten years and, under the contract, he was due to receive one million euros per year. He could not explain why the payments had been made through UK shell companies. He also claimed that the declaration made for banking purposes that the subject of the consultancy was “agricultural issues” was the result of a misunderstanding that he had had with his accountant (see paragraph 27 above).

737. The Investigation Body notes that the matters related to Mr Volontè’s engagement with Mr Suleymanov and Mr Mammadov, including the genuineness of the consultancy contract, are central to the pending criminal proceedings in Italy (see paragraphs 272-276 above). Having regard to the important principle of the presumption of innocence, it does not therefore find it appropriate to reach a firm conclusion on the nature of Mr Volontè’s, Mr Suleymanov’s and Mr Mammadov’s activities.

738. Nevertheless, the Investigation Body finds on the basis of the evidence before it that substantial grounds exist to believe that Mr Volontè, Mr Suleymanov and Mr Mammadov engaged in activities of a corruptive nature within the meaning of the relevant legal material (see paragraphs 549-550 above), and that Mr Volontè and Mr Suleymanov seriously breached paragraph 12 of the PACE Code of Conduct (see paragraph 511 above).

(c) The appointments of Mr Agramunt in PACE

739. The appointments of Mr Agramunt, first to the position of President of the EPP and then to the position of President of the Assembly, were marked with controversy and with suspicions that corruptive activities supported by Azerbaijan had played a role in the appointments. Mr Arif Mammadov considered that a great deal of Mr Agramunt's success in PACE had been attributable to the support, including support of a financial nature, received from Azerbaijan.

740. In this connection, the only direct evidence was obtained from Mr Arieu, who had been the subject of a corruptive offer made by the president of SOCAR Ukraine, Mr Elchin Mammadov, aimed at securing Mr Agramunt's appointment to the position of EPP President. The Investigation Body found no reason to doubt the evidence given by Mr Arieu. When questioned by the Investigation Body he gave a coherent statement which was consistent with his earlier written statement on the matter, and provided the names of two persons to whom he had reported the event (see paragraph 223 above).

741. According to the evidence given by Mr Arieu, he was approached by Mr Elchin Mammadov, the president of SOCAR Ukraine, the local Ukrainian branch of the Azerbaijani State oil company, and offered "any assistance needed" if he would support Mr Agramunt for the position of EPP President. Mr Elchin Mammadov had indicated that he was acting on the basis of orders given by a higher authority.

742. The Investigation Body finds in this incident clear evidence of corruptive activity within the meaning of the legal instruments referred to in the introductory part of this section of the report. It included a direct offer of the prospect of an undue advantage in exchange for Mr Arieu's agreement to support Mr Agramunt for the position of EPP President.

743. While the Investigation Body has no evidence to establish that Mr Agramunt directly solicited the president of SOCAR Ukraine or any other person to engage in corruptive activities in his favour, there is a high probability that such support by an important State entity of Azerbaijan must have been known, at least in general terms, to Mr Agramunt and condoned by him.

744. Such a conclusion is reinforced when seen against other evidence obtained by the Investigation Body, clearly showing support by Mr Agramunt for the interests of Azerbaijan. In particular (i) there is evidence showing that in a number of instances, Mr Agramunt played a key role in the adoption of various decisions in PACE that were seen, directly or indirectly, as being in favour of Azerbaijan (see paragraphs 116, 170, 265 and 405 above); (ii) there is evidence to show that Mr Agramunt intervened in draft reports prepared by the PACE secretariat to soften the expressed criticism of the Azerbaijani authorities (see paragraphs 104 and 108 above); (iii) as already found, Mr Agramunt acted contrary to the requirements of the requisite conduct of a rapporteur by disclosing to Mr Seyidov a draft report on Azerbaijan and receiving instructions from him (see paragraph 108 above); (iv) Mr Agramunt seems to have been in close contact with Mr Goris, who is one of the pivotal figures in the Azerbaijani lobbying mechanism within PACE linking various other supporters of Azerbaijan, such as Mr Destexhe, Mr Lintner, Mr Conde, Mr Iwiński, Mr Mariani and Mr Muslum Mammadov (see paragraphs 168-181 and 280 above); (v) Mr Agramunt's campaign

for the EPP presidency appears to have been directed by Mr Muslum Mammadov, who was at the time a lobbyist for Azerbaijan (see paragraph 280 above); and (vi) according to the email exchanges, Mr Agramunt was in close contact with Mr Volontè over his activities to undermine the Strässer report (see paragraph 279 above).

745. The Investigation Body notes, on the basis of all the evidence before it, that there are strong suspicions that corruptive activities, to which Mr Agramunt was a party, played a role in his appointment as President of the EPP in PACE.

THE INVESTIGATION BODY’S CONCLUSIONS AND RECOMMENDATIONS

I. SUMMARY OF THE CONCLUSIONS

746. Based on its examination of the evidence before it, the Investigation Body has reached the following conclusions.

A. Summary of the principal conclusions concerning the general functioning of PACE

747. In its above assessment of the general functioning of PACE, the principal conclusions of the Investigation Body are as follows:

- The key deficiency in the organisation of work and processes within PACE relates to the manner in which the decisions on appointments to different functions are made. This in particular concerns the lack of transparency and sufficient regulation of the procedures for such appointments (see paragraphs 557-559 above);
- Such lack of transparency and sufficient regulation of the procedures for appointments is a matter of particular concern in connection with the appointments of members of the Monitoring Committee and the Rules Committee, as well as the appointments of rapporteurs in general (see paragraphs 560-567 above);
- An issue of lack of transparency also arises with regard to the voting processes in the committees, which may affect the voting results and open the door to the possibility of the exertion of improper influence, including that of a financial nature (see paragraphs 568-573 above).

B. Summary of the principal conclusions concerning the functioning of PACE in the matters concerning Azerbaijan

748. The Investigation Body has made the following principal findings with regard to the activities in the Monitoring Committee:

- **Mr Pedro Agramunt** breached paragraphs 1.1.2, 1.1.4 and 1.2 of the Code of Conduct for rapporteurs of the Parliamentary Assembly, and the Code of Conduct of the Monitoring Committee (see paragraphs 586-587 above);
- **Mr Samad Seyidov** breached paragraph 5.1 of the PACE Code of Conduct (see paragraph 588 above);

- **Mr Tadeusz Iwiński** breached 1.1.2, 1.1.4 and 1.2 of the Code of Conduct for rapporteurs of the Parliamentary Assembly, and the Code of Conduct of the Monitoring Committee (see paragraphs 589-590 above);
- **Mr Agustín Conde** breached paragraphs 1.1.2, 1.1.4 and 1.2 of the Code of Conduct for rapporteurs of the Parliamentary Assembly, and the Code of Conduct of the Monitoring Committee (see paragraphs 591 above);
- **Mr Cezar Florin Preda** breached paragraphs 1.1.4 and 2.1 of the Code of Conduct for rapporteurs of the Parliamentary Assembly, and the Code of Conduct of the Monitoring Committee (see paragraphs 592-594 above);
- **Mr Stefan Schennach** breached paragraphs 1.1.1, 1.1.2, 1.1.4 and 1.2 of the Code of Conduct for rapporteurs of the Parliamentary Assembly, and the Code of Conduct of the Monitoring Committee, as well as paragraphs 5.1, 5.6, 8 and 9 of the PACE Code of Conduct (see paragraphs 595-596 above)

749. With regard to the activities in the Committee on Legal Affairs and Human Rights, the Investigation Body has found the following:

- **Mr Alain Destexhe** breached paragraph 1.1.1 of the Code of Conduct for rapporteurs of the Parliamentary Assembly, and paragraphs 5.1, 5.6, 8 and 9 of the PACE Code of Conduct (see paragraphs 600-608 above).

750. In respect of the activities in other committees, the Investigation Body has found the following:

- **Mr Robert Walter** breached paragraph 1.1.1 of the Code of Conduct for rapporteurs of the Parliamentary Assembly, and paragraphs 5.1, 5.5, 5.6, 8 and 9 of the PACE Code of Conduct (see paragraphs 611-618 above).

C. Summary of the principal conclusions on the practical functioning of election observation

751. On the practical functioning of the PACE election observation missions, the Investigation Body has made the following findings:

- In order to avoid appearances of bias and to strengthen the authority of PACE's election observation missions, PACE should in principle refrain from deploying an election observation mission if ODIHR decide for valid reasons not to deploy their own;
- For the same reasons, the heads of the PACE election observation missions should use every endeavour to reach a common position with ODIHR and the other members of the IEOM in any statements made on the observation of elections (see paragraph 631 above).
- There appears to be confusion over the respective roles of MPs and staff members participating in election observation missions (see paragraph 661 above), which has had an effect on the orderly conduct of those missions and given rise to suspicions of wrongdoing. PACE should consider strengthening and clarifying the Guidelines.

752. With regard to conflict of interest and other individual behaviour, the Investigation Body has found the following:

- **Mr Robert Walter** breached paragraphs 5.1, 5.6, 8 and 9 of the PACE Code of Conduct in the context of the 2013 election (see paragraphs 618, 640-641 above);
- **Mr Agustín Conde** breached paragraphs 1.1.2, 1.1.4 and 1.2 of the Code of Conduct for rapporteurs of the Parliamentary Assembly, and the Code of Conduct of the Monitoring

- Committee in the context of the 2015 elections, where he participated in the observation mission *ex officio* in his capacity as rapporteur of the Monitoring Committee (see paragraphs 591 and 630 above);
- **Mr Tadeusz Iwiński** breached paragraphs 1.1.2, 1.1.4 and 1.2 of the Code of Conduct for rapporteurs of the Parliamentary Assembly, and the Code of Conduct of the Monitoring Committee in the context of the 2015 elections, where he participated in the observation mission *ex officio* in his capacity as rapporteur of the Monitoring Committee (see paragraphs 590 and 630 above);
 - **Ms Karin Strenz** breached paragraphs 5.1, 5.6, 8 and 9 of the PACE Code of Conduct in the specific context of the 2015 elections and in view of the continuing conflict of interest when carrying out her other various activities in PACE relating to Azerbaijan (see paragraph 644 above);
 - **Mr Jordi Xuclà** breached paragraph 13 of the PACE Code of Conduct in the context of the 2015 elections (see paragraph 663 above);
 - **Mr Alain Destexhe** breached paragraphs 5.1, 5.6, 8 and 9 of the PACE Code of Conduct in the context of the 2015 elections and the 2016 re-run elections (see paragraphs 608, 640-641 above);
 - **Mr Stefan Schennach** breached paragraphs 1.1.1, 1.1.2, 1.1.4 and 1.2 of the Code of Conduct for rapporteurs of the Parliamentary Assembly, and the Code of Conduct of the Monitoring Committee, as well as paragraphs 5.1, 5.6, 8 and 9 of the PACE Code of Conduct, in the context of the 2016 re-run elections where he participated in his capacity as rapporteur of the Monitoring Committee (see paragraphs 596, 640-641 above).

753. With regard to the participation of members and former members of PACE in election observation missions outside of PACE, the Investigation Body notes that there is nothing in PACE's ethical standards to prevent members or former members of PACE from participating in election observation missions deployed by other organisations, be it OSCE-PA, ODIHR, PA-CIS, their respective national parliaments or NGOs, or other private organisations.

D. Summary of the principal conclusions on the exchange of gifts and different forms of benefits in the matters concerning Azerbaijan

754. On the exchange of gifts and different forms of benefits in the matters concerning Azerbaijan, the Investigation Body has made the following findings:

- The Investigation Body has not found that the receipt of gifts and benefits has played a prominent role in the PACE activities concerning Azerbaijan or that it has been shown to have affected the requirements of neutrality in the work of the PACE MPs, in particular the rapporteurs (see paragraphs 678-682 above);
- Nevertheless, the Investigation Body notes with concern that only a few declarations of gifts have been made so far in PACE. There is a need for transparency in the receipt of gifts or benefits of any nature, as required under paragraph 14 of the PACE Code of Conduct, and in accordance with the procedure set out in PACE's new ethical framework (see paragraphs 683 and 685 above);
- The Investigation Body has also found unacceptable the suggestion that PACE MPs would not consider themselves to be bound by the rules on the declaration of gifts in PACE but only by those rules in their national parliaments. There is a need for diligent observance

by MPs of the rules on declarations of gifts and interests as envisaged under the relevant PACE ethical framework, and for effective mechanisms to monitor compliance with those rules (see paragraph 684 above).

E. Summary of the principal conclusions concerning the use of financial means and corruptive activities to influence PACE’s work concerning Azerbaijan

755. The Investigation Body has found that the following former PACE MPs performed lobbying activities in PACE in breach of paragraph 16 of the PACE Code of Conduct:

- **Mr Eduard Lintner** (see paragraphs 689-694 above);
- **Mr Stef Goris** (see paragraphs 695-700 above);
- **Mr Jaakko Laakso** (see paragraphs 701-704 above);
- **Ms Karin S. Woldseth** (see paragraphs 705-708 above);
- **Mr Göran Lindblad** (see paragraphs 709-717 above).

756. The Investigation Body’s findings concerning corruptive activities are the following:

- There are substantial grounds to believe that **Mr Luca Volontè**, **Mr Elkhan Suleymanov** and **Mr Muslum Mammadov** engaged in activity of a corruptive nature (see paragraphs 728-738 above) and that Mr Volontè and Mr Suleymanov seriously breached paragraph 12 of the PACE Code of Conduct (see paragraph 738 above);
- There is a strong suspicion that **Mr Pedro Agramunt** was party to activity of a corruptive nature (see paragraphs 739-745 above).

II. RECOMMENDATIONS FOR THE ASSEMBLY’S ETHICAL FRAMEWORK

757. In view of its findings and conclusions above, the Investigation Body makes the following recommendations on the measures to be implemented to rectify the identified shortcomings and fill the gaps in the Assembly’s ethical framework:

- i. to take the necessary measures without delay to make the new ethical framework, introduced following GRECO’s assessment of its 2015 ethical framework (see paragraphs 530-536 above), fully operational and effective, in particular in relation to the prevention of conflict of interest, the receipt of gifts, lobbying, the privileges and duties of honorary members, and the capacity to institute the relevant proceedings in the event of non-compliance with the ethical standards;
- ii. to consider implementing all the remaining recommendations made by GRECO which are not fully or partially covered by the new ethical framework. This in particular concerns the necessity to (i) further harmonise the various existing codes and guidelines on the conduct of PACE members; (ii) provide further clarity to the definition of the sanctions that may be applied for breaches of the Code of Conduct, in particular by clarifying the meaning of the concept of “minor violation” and “serious breach” of the Code of Conduct (paragraphs 7 and 8), as well as providing foreseeable and accessible guidance to the Rules Committee on when to publish its finding of a “minor violation” of the Code of Conduct by an MP on the Assembly’s website (section 7) and when to apply a sanction for a “serious breach” of the Code of Conduct (section 8); (iii) complement the existing rules on immunity with a set of clear and objective criteria; and (iv) establish mechanisms for the receipt and processing of information on allegations of corruption and fraud;

- iii. to foster transparency in the work and decision-making processes of the leaders of the political groups, in particular by establishing mechanisms which will ensure that the decision-making processes on appointments in the Assembly's various committees and other bodies, notably in the Monitoring Committee and the Rules Committee, are transparent and sufficiently regulated;
- iv. to ensure that transparent and sufficiently regulated procedures for the appointment of rapporteurs are put in place. Moreover, it is necessary to ensure that the principles related to the concept of a conflict of interest are made clearer to the rapporteurs and that the duty to make the necessary declarations of the absence of any such conflict is emphasised;
- v. to ensure that a robust and consistent approach is applied to monitor the observance of the declarations by rapporteurs of the absence of any conflict of interest, both at the moment when the declaration is made and at any time during a rapporteur's term in office. In particular, procedures should be put in place to allow for arguable allegations of a conflict of interest on the part of a rapporteur, or other forms of inappropriate conduct or breaches of ethical standards, to be investigated and, where appropriate, sanctioned;
- vi. to consider introducing a fully transparent voting system in the committees, based on the one existing in the PACE plenary, subject to ensuring that adequate safeguards against abuse are put in place;
- vii. to put in place relevant procedures to allow for a clear identification of those who have the right to vote in a committee and to safeguard against deliberate attempts to falsify the vote. Any attempt to falsify a vote must be investigated and met with appropriate sanctions;
- viii. to take steps to ensure that improper pressure, including pressure from governments, is not brought to bear on the free and independent voting of MPs in pursuance of the aims and basic principles of the Council of Europe;
- ix. to put in place clear rules and procedures on the conduct of MPs in the context of missions undertaken on behalf of the Assembly and to ensure that those rules and procedures are made known to every MP taking part in such missions. These procedures should in particular regulate: (i) participation in meetings (including the reporting protocols for cases in which private meetings are held with the authorities); (ii) observance of the established programme of a visit; (iii) conduct in the context of an offer of hospitality by the local authorities; and (iv) the respective roles of the PACE secretariat and MPs in the mechanisms for reporting on missions. Failure to comply with the procedures regulating appropriate conduct in the context of missions should be investigated and met with appropriate sanctions;
- x. in the context of election observation missions, to consider including in the ethical framework a specific part dedicated to election observation, in order to ensure effective compliance with the Guidelines, strengthened and clarified as indicated in the Investigation Body's assessment.

III. THE INVESTIGATION BODY'S FINAL REMARKS

758. Corruption is one of the most widespread and insidious of social evils. Its scourge has been felt in every part of society, undermining the public trust and confidence in officials, elected representatives and institutions, national and international. The Parliamentary Assembly of the Council of Europe has not been spared that scourge. Allegations of corrupt and improper activities on the part of members and former members of the Assembly, which have for several years circulated in the media and in the reports of various organisations, have done immeasurable damage to the reputation and standing of the Assembly itself and of the Council of Europe as a whole and to the public trust in a system established for the purposes of upholding and protecting the universal values of pluralistic democracy, human rights and the rule of law.

759. The Parliamentary Assembly is to be commended for its courage in reacting to these allegations and making clear its determination not to tolerate corruption within its ranks. It has done so not only by inviting GRECO to assess and recommend improvements to the regulatory framework governing the conduct of members of the Assembly but by responding to the call, made both inside and outside the institution itself, for an independent investigation of the allegations of corruption and other forms of unethical conduct. In doing so, it has set an example to other national and international institutions confronted with similar grave challenges.

760. The task undertaken by the Investigation Body has been a complex and sensitive one, involving, as it has, a detailed examination of a wide variety of allegations and rumours of suspicious conduct, suggesting corrupt or improper behaviour. The body's role has been made more difficult by the fact that it was to a great extent reliant on the cooperation of those summoned to appear before it, whether members or former members of the Assembly, members of its secretariat, or representatives of the media and of civil society. The support that the Investigation Body received was, for the most part, positive. But, to its regret, several key witnesses refused or failed to appear before it, despite repeated requests. This significantly hampered the investigatory work of the body.

It was a matter of encouragement that, despite this handicap, the Investigation Body was not only able to examine the principal grounds of suspicion raised against parliamentarians in the various reports but to find many of them to be unsubstantiated. Regrettably, the body also found several examples of a failure to respect the rules concerning the declaration of a conflict of interest by members of the Assembly, as well as those governing lobbying activities by its former members. Such breaches of the rules, which are specifically designed to ensure that the work of members of the Assembly, especially that concerning the monitoring of States and the observation of national elections, is carried out impartially and free from improper influences, serve only to undermine the authority of the institution. More seriously still, the Investigation Body found evidence to give rise to strong suspicions of corruptive conduct involving members of the Assembly, one of which has been widely mediatised and was among the principal reasons prompting the setting up of the Investigation Body.

761. The role of the body, according to its terms of reference, was not only to identify conduct and practices contrary to the Assembly's ethical standards but to draw up recommendations on the measures needed to rectify any shortcomings and gaps in the ethical framework of the institution. This the Investigation Body has done, strongly endorsing GRECO's recommendations for improving the regulatory framework and making additional proposals for further strengthening the system and introducing mechanisms to ensure more effective compliance with the rules. It is to be hoped that,

once implemented, these measures will significantly reduce, if not wholly eliminate, the risk of unlawful and unethical behaviour within the Assembly.

762. The fight against corruption, however, is not one for the Assembly alone. It depends crucially on support from other entities within the Council of Europe and their readiness to react promptly and robustly to allegations of corruption and fostering of interests whatever their source. It depends also on cooperation from national authorities and, more particularly, from national parliaments, which carry a special responsibility in this regard. It is from their ranks that members of the Parliamentary Assembly are drawn. It is on those institutions that the Assembly must rely, not only to ensure that those representing them are of the highest integrity, but to bring home to those representatives the vital importance of full compliance with the ethical standards set at both national and international level. More than this, where serious concerns about the conduct of members of the national delegations are brought to their attention, the effective tackling of corruption depends on the willingness of national legislatures to follow up on such concerns and to take any necessary action.

In a speech strongly advocating the setting up of the Investigation Body, the then doyenne of the Assembly, Ms Josette Durrieu, observed: "The strength of the Council of Europe is moral. We are the vehicles and the guarantors of universal values". It is only through the concerted action of all concerned to expose and root out all forms of unethical conduct that the struggle against corruption can be won and that trust in the Council of Europe, as the pre-eminent guardian of those values, can be restored.

APPENDIX I: Mandate of the Investigation Body

763. The terms of reference of the Investigation Body (Doc. 14289 Add. 3)³⁹⁴ provide as follows (footnotes omitted):

“Title and length of the term of office

1. The Assembly decides to set up an independent external investigation body to look into allegations of corruption within the Assembly.

2. It shall begin its duties with effect from the appointment of its members and its duties shall terminate on the submission of its final report, or at the latest on 31 December 2017. The Bureau of the Assembly may extend the investigation body’s terms of reference, if need be.

Purpose

3. The purpose of the investigation body is to carry out a detailed independent inquiry into the allegations of corruption and fostering of interests made against certain members or former members of the Assembly, to examine the practical functioning of the Assembly in its various activities (including but not restricted to part-sessions, committee and sub-committee meetings, rapporteur missions, election observation missions and participation in various events) and its decision-making mechanisms in order to:

- verify whether there are any forms of individual conduct by members of the Assembly or former members of the Assembly which have not respected the provisions of the Code of Conduct for members of the Parliamentary Assembly and other relevant codes of conduct;

- identify any practices contrary to the Assembly’s ethical standards, and determine the extent thereof;

- establish, in the light of these findings, whether there is sufficient proof to take action against members or former members of the Assembly, pursuant to paragraphs 19 and 20 of the Code of Conduct for members of the Parliamentary Assembly;

- draw up recommendations on the measures to be implemented to rectify the shortcomings and fill the gaps in the Assembly’s ethical framework.

Composition

4. The investigation body shall comprise three members, independent senior figures, from institutions enjoying the highest moral reputation, having proven and acknowledged professional competence, expertise and experience in connection with the mission of the investigation body (such as ethics officer, financial auditor, fraud examiner, legal professional having served as an investigator, prosecutor, judge or expert in procedures for monitoring ethical standards).

5. Members must have knowledge of parliamentary functioning and, if possible, of the functioning of the Council of Europe.

6. Members are appointed by the Bureau of the Assembly, which shall seek a suitable balance of skills and knowledge – and wherever possible a gender balance. These appointments are submitted to the Assembly for ratification. Once appointed, members cannot be dismissed.

7. A vacancy caused by resignation or death shall be filled for the remainder of the term of office by the Bureau of the Assembly, subject to ratification of the appointment by the Assembly.

³⁹⁴ Available at http://website-pace.net/en_GB/web/apce/external-investigation-body (last accessed on 15 February 2018).

Procedure and competence

8. The investigation body shall decide on its mode of operation, its working methods and the procedures required to enable it to fulfil its mission, in keeping with the legal and regulatory framework of the Council of Europe. It informs the Bureau accordingly and seeks its advice if needed. The Bureau may decide if necessary to create an ad hoc liaison committee to facilitate this task.

9. The investigation body shall gather and make use of all relevant information and all documentary, testimonial and material evidence necessary for the fulfilment of its mission. It may, in particular:

- summon anyone, in particular any member or former member of the Assembly, while respecting their parliamentary status, and any member of the Assembly secretariat, to give evidence,
- hear any witness wishing to be heard by the investigation body,
- request the assistance of any national authority of a member state,
- request the provision of any document it deems relevant for its investigation.

10. The investigation body shall have no jurisdictional competence. It may decide to transmit the information it has gathered to any national judicial authorities, on official request, in the context of ongoing criminal investigations or proceedings, in keeping with the legal and regulatory framework of the Council of Europe.

11. The work of the investigation body shall enjoy the utmost confidentiality.

12. The investigation body shall report back to the Bureau of the Assembly, presenting a final report. This report shall be made public. The investigation body may decide that parts of this report shall remain confidential.

13. The working languages of the investigation body shall be the two official languages of the Organisation.

14. The investigation body shall sit in Strasbourg (at the seat of the Council of Europe) and may, in the exercise of its mission, travel to any member state.

15. In drafting its recommendations, the investigation body shall refer to the ethical standards in force in the Assembly and shall take account of the case-law of the European Court of Human Rights and the work of the Group of States against Corruption (GRECO), MONEYVAL and the Venice Commission.

Status of the investigation body

16. The members of the investigation body shall serve in an individual capacity, independently of their national obligations.

17. In the exercise of their duties, the members of the investigation body shall enjoy the privileges and immunities granted to experts of the Council of Europe (applicable under Article 2 of the Protocol to the General Agreement on Privileges and Immunities (ETS No.10)). Council of Europe member states are called upon to facilitate the mission of the investigation body and, in particular, guarantee the freedom of movement of its members within their respective territory.

18. Privileges and immunities are granted to the members of the investigation body in the interests of the Council of Europe, not for their personal benefit, in order to enable them to carry out their duties in an independent and efficient manner.

Rights and obligations

19. The members and honorary members of the Assembly shall undertake to co-operate fully with the investigation body, in the exercise of its mission and at every stage of its investigation. They shall be required to provide any information demanded of them and any document in their possession. Due account shall be taken of relevant national legislations providing parliamentarians with specific rights and protection in this regard.

20. Staff of the Council of Europe Secretariat, including the Assembly secretariat, shall be covered, from the point of view of whistle-blowing, by the provisions of Rule No. 1327 of the Secretary General of the Council of Europe of 10 January 2011 on awareness and prevention of fraud and corruption.

21. The protection recognised by the above mentioned Rule No. 1327 shall apply to any witness heard by the investigation body who, although they are not Council of Europe Secretariat members, participate in the Council of Europe's activities, wherever they may be held – in particular trainees, experts, consultants.

22. The rules governing the access to, holding of and exploitation of Council of Europe documents apply to the investigation body. The Secretary General of the Council of Europe is called upon to facilitate the mission of the investigation body by putting at its disposal the documents, of any kind, which the investigation body believes are necessary. The investigation body shall make use of confidential or restricted documents only if they are directly related to the investigation it is tasked with.

23. In its final report the investigation body shall mention any refusal to co-operate, or any refusal to disclose information or to give access to or transmit any document necessary to carry out its duties.

Means and material conditions of operation of the independent investigation body

24. The Secretary General of the Parliamentary Assembly shall ensure that the investigation body is provided with the administrative and financial resources required to fulfil its mission and covering all operating costs of the investigation body and its secretariat (wages, fees, per diem, travel expenses in accordance with the rules applicable to Council of Europe official journeys, insurance).

25. The investigation body shall be assisted by a secretariat with knowledge and expertise in the functioning of the Council of Europe, that is however independent of the Parliamentary Assembly.

26. The premises made available to the investigation body shall ensure a working environment guaranteeing confidentiality, security and calm."

APPENDIX II: Procedure followed by the Investigation Body

A. Written procedure and fact-finding missions

1. Documentary evidence

764. The Investigation Body obtained numerous documents and statements from various individuals, organisations and authorities. Most of this material was submitted at the body's direct request or pursuant to its public calls for cooperation. Some of it was submitted spontaneously by relevant actors. In addition, the Investigation Body had regard to the information that appeared in the media and/or was otherwise available in the public domain.

765. The Investigation Body made several requests for the submission of written statements to various individuals. The following persons replied to such requests providing written statements on the questions put to them:

- Ms Doris Fiala, member of PACE (Switzerland, *Les Libéraux-Radicaux*)
- Ms Adele Gambaro, member of PACE (Italy, *ALA - Scelta Civica per la Costituente Liberale e Popolare*)
- Ms Milica Marković, member of PACE (Bosnia and Herzegovina, *Alliance of Independent Social Democrats*)
- Ms Marietta De Pourbaix-Lundin, former member of PACE (Sweden, *Moderate*)
- Ms Marta Pascal Capdevila (Spain, *Catalan European Democratic Party*)

766. Requests sent to the following persons for the submission of written statements remained unanswered by 16 March 2018:

- Mr Tiny Kox, member of PACE (the Netherlands, *Socialist Party*)
- Ms Ria Oomen-Ruijten, member of PACE (the Netherlands, *Christian Democratic Appeal*)
- Mr Ondřej Benešik, member of PACE (the Czech Republic, *Christian and Democratic Union - Czechoslovak People's Party*)
- Mr Gultakin Hajibayli, former member of PACE (Azerbaijan, *Independent*)
- Mr Zmago Jelinčič Plemeniti, former member of PACE (Slovenia, *Slovene National Party*)
- Mr Jaakko Laakso, former member of PACE (Finland, *Left Alliance*)

2. Missions and official meetings

767. A member of the Investigation Body, accompanied by one of the legal advisers from the body's secretariat, conducted a fact-finding mission in Milan where he met Mr Scudieri and Mr Ramondini, deputy prosecutors in charge of the Volontè case. The deputy prosecutors disclosed all the material evidence which had already been made available to the Court of Milan and to Mr Volontè and his lawyers.

768. Several meetings were held with the Secretariats of PACE, of the Venice Commission, of GRECO, of MONEYVAL and with the Directorate of Internal Oversight of the Council of Europe. The Investigation Body's secretariat held a meeting with staff from the European Anti-Fraud Office (OLAF) in Brussels and the OLAF contact person in the Secretariat of the European Parliament in Strasbourg.

769. The Investigation Body met the Secretary General of the Council of Europe on 9 October 2017, and the President of PACE on 11 October 2017.

B. Oral procedure

770. The Investigation Body heard a total of fifty witnesses during six hearing sessions, which were held at the European Court of Human Rights in Strasbourg, France. While most of the witnesses travelled to Strasbourg to attend their hearings, some of them were heard via secured video-conferences from distant locations. The Investigation Body's working languages were English and French, the official languages of the Council of Europe. However, in some cases, simultaneous interpretation from and to non-official languages was provided. In addition to their oral evidence, some of the witnesses also provided documentary and other material evidence either spontaneously or at the body's request.

771. On 4-7 September 2017, the Investigation Body heard the following witnesses:

- Mr Günter Schirmer, Head of the Secretariat of the PACE Committee of Legal Affairs and Human Rights
- Ms Delphine Freymann, Secretary of the PACE Monitoring Committee
- Mr Wojciech Sawicki, Secretary General of PACE
- Ms Agnieszka Szklanna, Secretary of the PACE Committee on Legal Affairs and Human Rights
- Ms Valérie Clamer, Head of the Secretariat of the PACE Committee on Rules of Procedure, Immunities and Institutional Affairs
- Mr Mark Neville, Head of the Private Office of the President of PACE
- Mr Gerald Knaus, Chairman of the European Stability Initiative
- Ms Stefanie Schiffer, Board of the European Platform for Democratic Elections
- Mr Adám Foldes, International Secretariat of Transparency International
- Mr John Dalhuisen, Director of the Europe and Central Asia Regional Office, Amnesty International
- Mr Yuri Dzhibladze and Ms Olga Zakharova, from the organisation Freedom Files (member of the Civic Solidarity Platform)

772. On 9-13 October 2017, the Investigation Body heard the following witnesses:

- Ms Lise Christoffersen, member of PACE (Norway, *Labour Party*)
- Mr Andrzej Drzemczewski, former Head of the Secretariat of the PACE Committee of Legal Affairs and Human Rights
- Mr Leo Platvoet, former member of PACE (Netherlands, *Green Left*)
- Mr Christoph Strässer, former member of PACE (Germany, *SPD*)
- Mr Joseph Debono Grech, former member of PACE (Malta, *Labour Party*)
- Mr Paul Wille, former member of PACE (Belgium, *Open VLD*)
- Mr Frank Daeschler, administrative assistant in the Election Observation and Interparliamentary Cooperation Division of PACE
- Mr Dick Marty, former member of PACE (Switzerland, *Radical démocratique*)
- Ms Anne Brasseur, member and former President of PACE (Luxemburg, *Parti démocratique*)
- Mr Michael McNamara, former member of PACE (Ireland, *Labour*)
- Mr Arif Mammadov, former Permanent Representative of Azerbaijan to the Council of Europe
- Mr Frank Schwabe, member of PACE (Germany, *SPD*)
- Ms Ingrid Schou, member of PACE (Norway, *Conservative Party*)

- Ms Danièle Gastl, administrative assistant in the Election Observation and Interparliamentary Cooperation Division of PACE
 - Mr Gaël Martin-Micalleff, Legal Advisor at the Elections Division of the Venice Commission (Council of Europe)
 - Ms Caroline Ravaud, Head of the Secretariat of the PACE Monitoring Committee
 - Mr Tadeusz Iwiński, former member of PACE (Poland, *Alliance of the Democratic Left*)
773. On 23-25 October 2017, the Investigation Body heard the following witnesses:
- Mr Andres Herkel, member of PACE (Estonia, *Estonian Free Party*)
 - Mr Adriano Scudieri and Mr Elio Ramondini, deputy prosecutors from the Milan Court
 - Ms Agnieszka Nachilo, Head of the Secretariat of the PACE Committee on Migration, Refugees and Displaced Persons
774. On 6-8 November 2017, the Investigation Body heard the following witnesses:
- Mr Alain Destexhe, former member of PACE (Belgium, *MR*)
 - Lord Malcolm Bruce, former member of PACE (United-Kingdom, *Liberal Democrat*)
 - Mr Robert Walter, former member of PACE (United-Kingdom, *Conservative*)
 - Mr Bogdan Torcătoriu, administrator at the Election Observation and Interparliamentary Cooperation Division of PACE
 - Mr Claude Moniquet, Chief Executive Officer of the European Strategic Intelligence and Security Centre
 - Ms Leyla Yunus, journalist and human rights activist
 - Mr Björn Berge, Secretary to the Committee of Ministers of the Council of Europe and former Head of the Private Office of the Secretary General of the Council of Europe
 - Ms Despina Chatzivassiliou, Head of the Secretariat of the PACE Committee on Political Affairs and Democracy
775. On 12 December 2017, the Investigation Body heard the following witnesses:
- Mr Jordi Xuclà, member of PACE (Spain, *CDC*)
 - Mr Göran Lindblad, former member of PACE (Sweden, *Moderate*)
 - Mr Volodymyr Arieiev, member of PACE (Ukraine, *Petro Poroshenko Bloc*)
776. On 22-25 January 2018, the Investigation Body heard the following witnesses:
- Mr Axel Fischer, former member of PACE (Germany, *CDU/CSU*)
 - Mr Stef Goris, former member of PACE (Belgium, *VLD*)
 - Mr Stefan Schennach, member of PACE (Austria, *SPÖ*)
 - Mr Harald Jepsen, international election expert, former Deputy Head of the 2013 ODIHR election observation mission to Azerbaijan
 - Mr Samad Seyidov, member of PACE (Azerbaijan, *New Azerbaijan Party*)
 - Mr Thierry Mariani, former member of PACE (France, *Les Républicains*)
 - Ms Dragana Filipović, former Head of the Council of Europe Office in Baku
 - Ms Ivi-Triin Odrats, secretariat of the PACE Committee on Culture, Science, Education and Media
777. The following persons were summoned to give oral evidence before the Investigation Body but declined to appear on any of the proposed dates:
- Mr Pedro Agramunt member and former President of PACE (Spain, *Partido Popular*)
Mr Agramunt was summoned to appear before the Investigation Body via email and registered mail on 12 and 27 September, 12 October and 9 November 2017.

On 27 November 2017 the Investigation Body received a letter from Mr José Ibanez and Ms Blanca Asensio, Mr Agramunt's lawyers, arguing that the summons to give evidence before the body contained no information as to why Mr Agramunt had been summoned. They further argued that the extension of the Investigation Body's mandate had not been communicated to the public, that the identity of the parties summoned had not been published and that the status of Mr Agramunt in such investigation had not been defined. The lawyers stated that Mr Agramunt would cooperate with the body once the "most basic information around his participation" had been provided and "the guarantees of his right of defence ... respected".

By a letter of 11 December 2017 the Investigation Body informed Mr Agramunt's lawyers that it was not a court and that its terms of reference did not confer on it any kind of judicial or disciplinary competence. It stressed that it had been set up by PACE in response to corruption allegations made in various NGO reports and press articles against members and former members of PACE in the context of the Assembly's activities with regard to Azerbaijan. The letter also stressed that the terms of reference did not identify any member or former member of PACE against whom allegations had been made and did not limit the scope of the investigation to allegations relating to Azerbaijan. The Investigation Body explained that it wished to hear Mr Agramunt in his capacity as former President of PACE and former co-rapporteur in the Monitoring Committee and as someone who had participated in several election observation missions to Azerbaijan. The body's letter also made it clear that Mr Agramunt would be heard as a witness who might have information relevant to the body's inquiries, and not as a defendant. For the same reasons, the hearing would be held in camera, and the questions put and answers given would be strictly confidential. The lawyers' attention was also drawn to the fact that the extension of the Investigation Body's terms of reference had been duly communicated to the public on 24 November 2017 through a press release, which was available on the relevant webpage of PACE.

In its letter of 11 December 2017, which was sent by email and registered mail, the Investigation Body invited Mr Agramunt's lawyers to inform the body by 18 December 2017 of a date and time that would suit Mr Agramunt for a hearing. A further reminder was sent on 12 January 2018.

On 27 March 2018 the Investigation Body received a letter from Mr Agramunt's lawyers, dated 15 March 2018 and posted on 21 March 2018, responding to the Investigation Body's letter of 11 December 2017. In their letter, Mr Agramunt's lawyers indicated that their client was willing to cooperate with the work of the body in writing.

On 29 March 2018, the Investigation Body replied, by email and registered mail, that given Mr Agramunt's persistent failure to respond to its communications and to comply with the deadlines set, it was unable to accept his belated proposal to cooperate by submitting evidence in writing at a time when the body's report, which was due to be delivered on 15 April 2018, was already at an advanced stage of preparation.

In a letter dated 4 April 2018 and received the next day by the Investigation Body, Mr Agramunt's lawyer strongly opposed the body's decision.

- Mr Elkhan Suleymanov, former member of PACE (Azerbaijan, *Independent*)
- Mr Muslum Mammadov, former member of PACE (Azerbaijan, *Independent*)

On 29 September 2017 the Investigation Body summoned Mr Suleymanov and Mr Mammadov to appear before it.

On 5 October 2017 the Investigation Body received by email a letter from Mr Marc Uyttendaele, lawyer of Mr Suleymanov and Mr Mammadov, informing the body of his clients' unavailability for the hearing. He contested the legal basis on which the investigation had been established. He also argued that his clients could not appear before the Investigation Body until their defence rights had been rigorously respected, in that they should have access to the documents from the file translated into French and the right to be legally represented.

By a letter of 9 October 2017, the Investigation Body advised Mr Uyttendaele of the scope of its investigation and its mandate.³⁹⁵ It also stressed that having regard to the principle of strict confidentiality of its work, as set out in its terms of reference, it was not possible to disclose the statements of witnesses or other evidence obtained during the investigation. However, it explained that the NGO reports which had led to the opening of the investigation were publicly available and could thus easily be consulted or, if need be, a copy could be provided by the body at any time. The Investigation Body also explained that Mr Suleymanov and Mr Mammadov would be heard as persons of interest who could provide relevant information on the matters falling within its mandate and thus should not, in principle, be represented. However, if they so wished, the Investigation Body would allow them to be legally represented at the hearing.

On 11 December 2017 Mr Uyttendaele replied by email, reiterating the arguments in his earlier submission and stating that if his request for the protection of the rights of defence could not be met, he could not advise his clients to give oral evidence to the Investigation Body.

On 15 December 2017 the Investigation Body replied by email, advising Mr Uyttendaele that, in view of the nature of the body's mandate, the issue of defence rights as such would not arise. Mr Uyttendaele was provided with the Investigation Body's terms of reference and the NGO reports that had led to the institution of the investigation in PACE. No reply was received to this email.

- Mr Luca Volontè, former member of PACE (Italy, *Unione di Centro*)

On 29 September and 12 October 2017 the Investigation Body summoned Mr Volontè to appear before it.

On 16 October 2017 Mr Volontè informed the Investigation Body that he would not be in a position to attend a hearing before the body owing to his status as a defendant in criminal proceedings in Italy. In its reply, the Investigation Body stressed the specific nature of its role and its lack of jurisdictional competence. It also invited Mr Volontè to keep it informed of the developments in his case and to submit, if he so wished, any information in writing. In his reply of 23 October 2017 Mr Volontè promised to contact the Investigation Body when possible.

On 15 February 2018 Mr Volontè informed the Investigation Body of his acquittal before the first-instance court in Milan on charges of money laundering.

- Mr Andreas Gross, former member of PACE (Switzerland, *Parti socialiste suisse*)

³⁹⁵ See above the details of the explanation sent to Mr Agramunt concerning the scope and mandate of the Investigation Body's work.

Mr Gross was summoned on 12 September 2017 to appear before the Investigation Body.

On 13 September 2017 Mr Gross informed the Investigation Body via email that he had just started working in a new post in the US and that he would not be available to give evidence to the body, even by means of a teleconference.

- Mr Michael Hancock, former member of PACE (United-Kingdom, *Independent*)

Following numerous attempts to obtain the contact details of Mr Hancock from various UK and COE authorities and bodies, on 28 November 2017 Mr Hancock telephoned the Investigation Body's secretariat and informed it that he would not under any circumstances give oral evidence to the body. He cited health reasons and stressed that he had left the COE in 2014 and had nothing to say to the body.

- Mr Wolfgang Grossruck, former President of the OSCE Parliamentary Assembly (Austria, *People's Party*)

After receiving the contact details of Mr Grossruck from the Permanent Representation of Austria to the COE, Mr Grossruck was summoned to appear before the Investigation Body on 1 December 2017 and 9 January 2018.

On 11 January 2018 the Investigation Body received an email from the Austrian Parliament, department for International Relations EU and International Services, informing it on behalf of Mr Grossruck that he would not be able to give evidence to the body. The reasons cited were that Mr Grossruck had retired five years previously and was not in the best of health.

778. The following persons were summoned to give oral evidence before the Investigation Body, declined to appear but provided written statements of their own motion or in agreement with the Investigation Body:

- Mr Agustín Conde, former member of PACE (Spain, *Partido Popular*)

Following a request to appear for a hearing, on 28 November 2017 Mr Conde provided a short written statement on his activities in PACE. He declined to appear for a hearing on the grounds that he had nothing to add.

- Mr Eduard Lintner, former member of PACE (Germany, *CDU/CSU*)

In reply to the Investigation Body's summons to an oral hearing, on 10 October 2017 Mr Lintner replied by email, briefly describing his activities in PACE. He declined the invitation to be heard by the Investigation Body on the grounds that many years had passed since he had left PACE and he could no longer remember the details. On 13 and 28 November 2017 the Investigation Body reiterated its wish to hear Mr Lintner as a witness. No reply was received.

- Ms Karin Strenz, member of PACE (Germany, *CDU/CSU*)

In reply to the Investigation Body's summons to an oral hearing on 12 October 2017, Ms Strenz replied by email that she was on sick leave and could therefore not give oral evidence to the body. She also stressed that she had sought legal advice concerning the allegations made against her by Mr Schwabe on the question of her links to Azerbaijan. On 20 October 2017 Ms Strenz informed the Investigation Body that she was still on sick leave and asked for a possibility to submit a written statement.

By a letter of 24 October 2017 the Investigation Body asked Ms Strenz to reply to a series of questions and advised her that the further course of action would be decided on the basis of the answers received.

On 6 November 2017 Ms Strenz sent by email a written statement on the issues put to her by the Investigation Body.

Having assessed the information received, the Investigation Body again invited Ms Strenz by a letter of 28 November 2017 to give oral evidence.

On 13 December 2017 Ms Strenz sent an email declining to give oral evidence to the body and asking for a possibility to submit further necessary explanations in writing.

On 19 December 2017 the Investigation Body advised Ms Strenz that after having carefully examined her written statement, it remained of the view that a hearing of her oral evidence was still needed. The Investigation Body also offered to accommodate any special needs which Ms Strenz might have, given her medical condition.

Ms Strenz replied through a lawyer, Ms Yvonne Kleinke, on 12 January 2018 indicating that she was willing to cooperate with the Investigation Body but was unable to come and give oral evidence to the body since she was occupied with her parliamentary duties. She asked that further possible questions be put to her in writing. On 19 January 2018 the Investigation Body put further specific questions to Ms Strenz in writing. Answers were received through her lawyer on 5 February 2018.

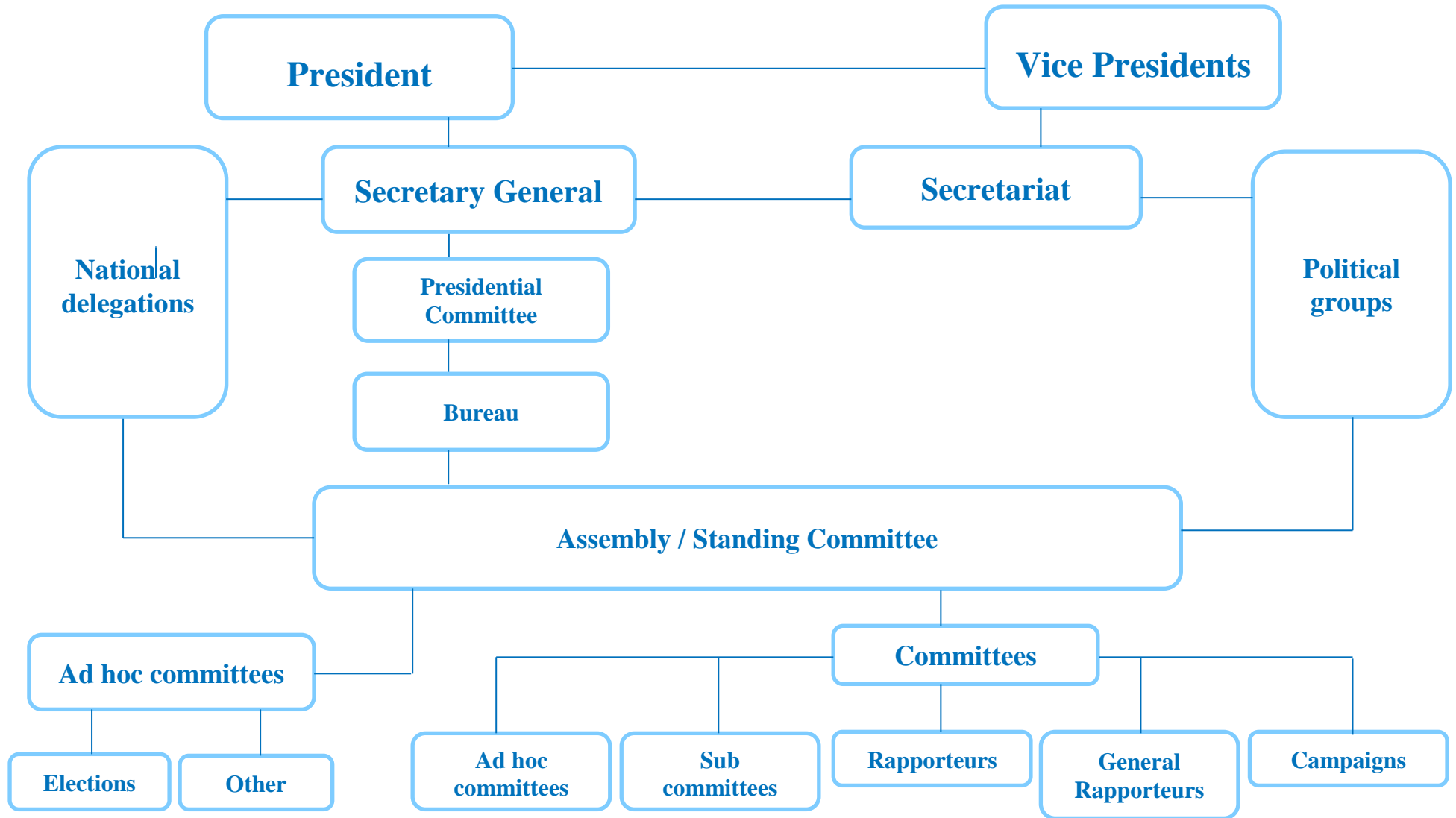
- Ms Karin S. Woldseth, former member of PACE (Norway, Progress)

In reply to the Investigation Body's summons for an oral hearing, and with the agreement of the Investigation Body, on 10 January 2018 Ms Woldseth provided a written statement on her involvement in the activities concerning PACE. She declined to give oral evidence to the body.

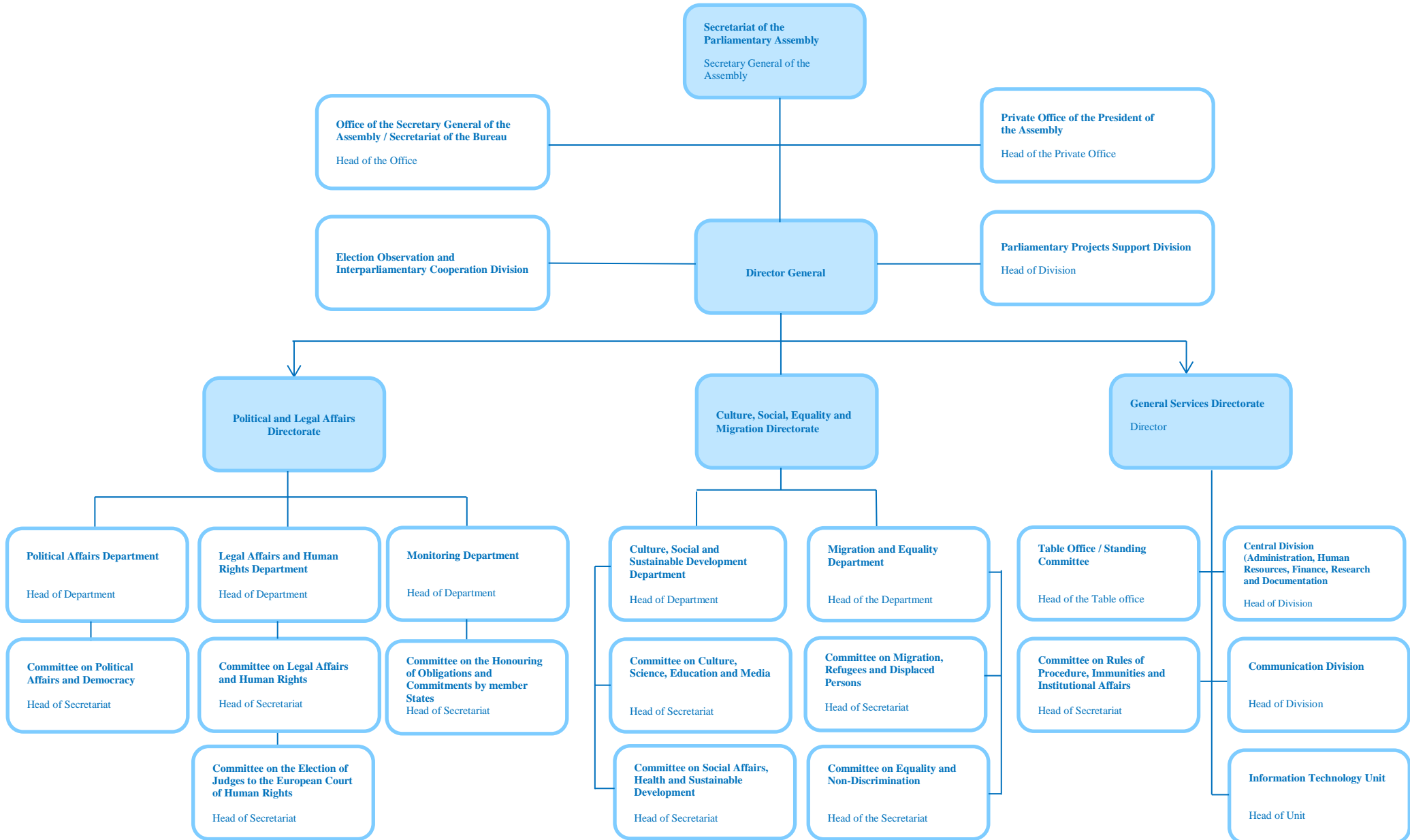
779. Mr Cezar Florin Preda, member of PACE (Romania, Parti démocrate liberal)

Although Mr Preda was repeatedly summoned to give oral evidence, by email and registered mail on 12 and 27 September, 12 October, 9 and 28 November 2017 and 12 January 2018, he never replied to the Investigation Body's requests.

APPENDIX III: Organisational chart of PACE



APPENDIX IV: Organisational chart of the PACE Secretariat



APPENDIX V: PACE activities concerning Azerbaijan

A. Monitoring Committee

780. The reports and information notes on Azerbaijan produced by the Monitoring Committee are the following:

- Doc. 9545 rev. (18/09/2002); Honouring of obligations and commitments by Azerbaijan; report by the co-rapporteurs Mr Andreas Gross (Switzerland) and Mr Guillermo Martínez Casañ (Spain); Res. 1305 (2002) adopted on 26/9/2002;
- AS/Mon(2003)26, 5 September 2003, confidential; Honouring of obligations and commitments by Azerbaijan: Azerbaijan; information note by the co-rapporteurs Mr Andreas Gross (Switzerland) and Mr Guillermo Martínez Casañ (Spain);
- Doc. 10030 (12/01/2004); Functioning of democratic institutions in Azerbaijan; report by the co-rapporteurs Mr Andreas Gross (Switzerland) and Mr Guillermo Martínez Casañ (Spain); Res. 1358 (2004) adopted on 27/1/2004;
- Doc. 10285 (20/09/2004); Implementation of Resolution 1358 (2004) on the functioning of democratic institutions in Azerbaijan; report by the co-rapporteurs Mr Andreas Gross (Switzerland) and Mr Andres Herkel (Estonia); Res. 1398 (2004) adopted on 05/10/2004;
- AS/Mon(2005)03, 10 January 2005, confidential; Honouring of obligations and commitments by Azerbaijan; information note on a fact-finding visit to Baku and Lenkoran (16-18 December 2004) by the co-rapporteurs Mr Andreas Gross (Switzerland) and Mr Andres Herkel (Estonia);
- AS/Mon(2005)11, 21 February 2005, confidential; Honouring of obligations and commitments by Azerbaijan; information note on a fact-finding visit to Baku (9-13 February 2005) by the co-rapporteurs Mr Andreas Gross (Switzerland) and Mr Andres Herkel (Estonia)
- Doc. 10569 (03/06/2005); Functioning of democratic institutions in Azerbaijan; report by the co-rapporteurs Mr Andreas Gross (Switzerland) and Mr Andres Herkel (Estonia); Res. 1456 (2005) adopted on 22/06/2005;
- Doc. 10807 rev. (24/01/2006); The challenge of still unratified credentials of the parliamentary delegation of Azerbaijan on substantial grounds; report by Mr Tony Lloyd (UK); Res. 1480(2006) adopted on 25/01/2006;
- AS/Mon(2006)20, 12 June 2006, confidential; Honouring of Obligations and Commitments by Azerbaijan; information note on a fact-finding visit to Baku (25-28 May 2006) by the co-rapporteurs Mr Andreas Gross (Switzerland) and Mr Andres Herkel (Estonia)
- Doc. 10959 (12/06/2006); Implementation of Resolution 1480 (2006) on the challenge of credentials of the parliamentary delegation of Azerbaijan; report by the co-rapporteurs Mr Andreas Gross (Switzerland) and Mr Andres Herkel (Estonia); Res. 1505 (2006) adopted on 26/06/2006;
- Doc. 11226 (30/03/2007); Honouring of obligations and commitments by Azerbaijan; report by the co-rapporteurs Mr Andres Herkel (Estonia) and Mr Tony Lloyd (UK); Res. 1545 (2007) adopted on 16/04/2007;
- AS/Mon(2008)10rev, 18 March 2008, declassified; Honouring of obligations and commitments by Azerbaijan; information note on a fact-finding visit to Baku

- (4-7 February 2008) by the co-rapporteurs Mr Andres Herkel (Estonia) and Ms Evguenia Jivkova (Bulgaria);
- Doc. 11627 (06/06/2008); The functioning of democratic institutions in Azerbaijan; report by the co-rapporteurs Mr Andres Herkel (Estonia) and Ms Evguenia Jivkova (Bulgaria); Res. 1614 (2008) adopted on 24/06/2008;
 - AS/Mon(2009)19, 9 June 2009, declassified; Honouring of obligations and commitments by Azerbaijan; information note on a fact-finding visit to Baku (8-10 April 2009) by the co-rapporteurs Mr Andres Herkel (Estonia) and Ms Evguenia Jivkova (Bulgaria);
 - AS/Mon(2009)26rev, 23 June 2009, declassified; Honouring of obligations and commitments by Azerbaijan; information note on recent developments in Azerbaijan by the co-rapporteurs Mr Andres Herkel (Estonia) and Ms Evguenia Jivkova (Bulgaria);
 - Doc. 12270 (31/05/2010); The functioning of democratic institutions in Azerbaijan; report by the co-rapporteurs Mr Andres Herkel (Estonia) and Mr Joseph Debono Grech (Malta); Res. 1750 (2010) adopted on 24/06/2010;
 - AS/Mon(2011)07rev, 12 April 2011, declassified; Honouring of obligations and commitments by Azerbaijan; information note on a fact-finding visit to Baku (1-3 February 2011) by the co-rapporteurs Mr Pedro Agramunt (Spain) and Mr Joseph Debono Grech (Malta);
 - AS/Mon(2012)05rev, 25 April 2012, declassified; Honouring of obligations and commitments by Azerbaijan; information note on a fact-finding visit to Baku (31 January - 2 February 2012) by the co-rapporteurs Mr Pedro Agramunt (Spain) and Mr Joseph Debono Grech (Malta);
 - Doc. 13084 (20/12/2012); The honouring of obligations and commitments by Azerbaijan; report by the co-rapporteurs Mr Pedro Agramunt (Spain) and Mr Joseph Debono Grech (Malta); Res. 1917 (2013) adopted on 23/01/2013;
 - AS/Mon(2014)17, 25 August 2014, declassified; Honouring of obligations and commitments by Azerbaijan; information note on a fact-finding visit to Baku (19-21 May 2014) by the co-rapporteurs Mr Pedro Agramunt (Spain) and Mr Joseph Debono Grech (Malta);
 - Doc. 13801 (05/06/2015); The functioning of democratic institutions in Azerbaijan; report by the co-rapporteurs Mr Pedro Agramunt (Spain) and Tadeusz Iwiński (Poland); Res. 2062 (2015) adopted on 23/06/2015;
 - AS/Mon(2016)08, 13 May 2016, declassified; Honouring of obligations and commitments by Azerbaijan; information note on a fact-finding visit to Baku (5-9 April 2016) by the co-rapporteurs Mr Stefan Schennach (Austria) and Mr Cezar Florin Preda (Romania);
 - AS/Mon(2016)26, 12 September 2016, declassified; Honouring of obligations and commitments by Azerbaijan: Information note on a fact-finding visit to Baku (15-17 June 2016) by the co-rapporteurs Mr Stefan Schennach (Austria) and Mr Cezar Florin Preda (Romania);
 - AS/Mon (2017)06, 19 February 2017, declassified; Honouring of obligations and commitments by Azerbaijan; information note on a fact-finding visit to Baku (12-14 January 2017) by the co-rapporteurs Mr Stefan Schennach (Austria) and Mr Cezar Florin Preda (Romania);

- Doc. 14403 (25/09/2017); The functioning of democratic institutions in Azerbaijan; report by the co-rapporteurs Mr Stefan Schennach (Austria) and Mr Cezar Florin Preda (Romania); Res. 2184 (2017) adopted on 11 October 2017.

B. Committee on Legal Affairs and Human Rights

781. The reports of the Committee on Legal Affairs and Human Rights concerning Azerbaijan are the following:

- Doc. 9310 (24/01/2002) and Doc. 9826 (26/06/2003); Political prisoners in Azerbaijan; reports by the rapporteur Mr Georges Clerfayt (Belgium); Res. 1272 (2002), 24 January 2002
- Doc. 10026; Political prisoners in Azerbaijan; report by the rapporteur Mr Malcolm Bruce (UK); Res. 1359 (2004), 27 January 2004;
- Doc. 10564; Follow-up to Resolution 1359 (2004) on political prisoners in Azerbaijan report by the rapporteur Mr Malcolm Bruce (UK); Res. 1457 (2005) and Rec. 1711 (2005), 22 June 2005;
- Doc. 13011; The definition of political prisoner; report by the rapporteur Mr Christoph Strässer (Germany); Res. 1900 (2012) adopted on 3 October 2012;
- Doc. 13079; The follow-up to the issue of political prisoners in Azerbaijan; report by the rapporteur Mr Christoph Strässer (Germany); not adopted;
- Doc. 14397; Azerbaijan's Chairmanship of the Council of Europe: what follow-up on respect for human rights?; report by the rapporteur Mr Alain Destexhe (Belgium); Res. 2185 (2017) adopted on 11 October 2017.

C. Committee on Political Affairs and Democracy

782. The reports on Azerbaijan produced by the Committee on Political Affairs and Democracy, and the respective rapporteurs, are the following:

- Doc. 10364; The conflict over the Nagorno-Karabakh region dealt with the Minsk Conference of the OSCE; report by the rapporteur Mr David Atkinson (UK); Res. Resolution 1416 (2005) adopted on 25 January 2005;
- Doc. 13930; Escalation of violence in Nagorno-Karabakh and the other occupied territories of Azerbaijan; report by the rapporteur Mr Robert Walter (UK).

D. Committee on Social Affairs, Health and Sustainable Development

783. The Committee on Social Affairs, Health and Sustainable Development examined a report concerning Azerbaijan "Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water" (Doc. 13931) prepared by the rapporteur Ms Milica Marković (Bosnia and Herzegovina); Res. 2085 (2016) adopted on 26 January 2016.

E. PACE election observation missions in Azerbaijan

784. The list of the PACE election observation missions in Azerbaijan is the following:

- Presidential election, 15 October 2003; Head of the delegation Mr Daniel Goulet (France);
- Parliamentary election, 6 November 2005; Head of the delegation Mr Leo Platvoet (the Netherlands);
- Parliamentary re-run, 13 May 2006; Head of the delegation Mr Leo Platvoet (the Netherlands);
- Presidential election, 15 October 2008; Head of the delegation Mr Andres Herkel (Estonia);
- Presence during the Constitutional referendum, 18 March 2009; Head of the delegation Mr Paul Wille (Belgium);
- Parliamentary elections, 7 November 2010; Head of the delegation Mr Tadeusz Iwiński (Poland);
- Presidential election, 9 October 2013; Head of the delegation Mr Robert Walter (UK);
- Parliamentary elections, 1 November 2015; Head of the delegation Mr Jordi Xuclà (Spain);
- Presence during the Repeat of the parliamentary elections in constituency No. 90 in Azerbaijan, 18 June 2016; delegation: Mr Alain Destexhe, Mr Cezar Florin Preda, and Mr Stefan Schennach;
- Constitutional referendum, 26 September 2016; Head of the delegation Mr Aleksandar Nikoloski (“the former Yugoslav Republic of Macedonia”).

APPENDIX VI: The relevant legal standards

A. ECtHR

1. *The functioning of effective political democracies*

785. In the case of *United Communist Party of Turkey and Others v. Turkey* (30 January 1998, § 45, *Reports of Judgments and Decisions* 1998-I), with regard to the importance of an “effective political democracy”, the Court reasoned as follows (references omitted):

“Democracy is without doubt a fundamental feature of the European public order ...

That is apparent, firstly, from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights ... The Preamble goes on to affirm that European countries have a common heritage of political tradition, ideals, freedom and the rule of law. The Court has observed that in that common heritage are to be found the underlying values of the Convention ...; it has pointed out several times that the Convention was designed to maintain and promote the ideals and values of a democratic society ...

In addition, Articles 8, 9, 10 and 11 of the Convention require that interference with the exercise of the rights they enshrine must be assessed by the yardstick of what is ‘necessary in a democratic society’. The only type of necessity capable of justifying an interference with any of those rights is, therefore, one which may claim to spring from ‘democratic society’. Democracy thus appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it.

The Court has identified certain provisions of the Convention as being characteristic of democratic society. Thus in its very first judgment it held that in a ‘democratic society within the meaning of the Preamble and the other clauses of the Convention’, proceedings before the judiciary should be conducted in the presence of the parties and in public and that that fundamental principle was upheld in Article 6 of the Convention ... In a field closer to the one concerned in the instant case, the Court has on many occasions stated, for example, that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual’s self-fulfilment ..., whereas [it further] noted the prime importance of Article 3 of Protocol No. 1, which enshrines a characteristic principle of an effective political democracy ...”

786. The Court has also stressed that the hallmarks of a “democratic society”, to which it attaches particular importance, are pluralism, tolerance and broadmindedness. It stressed in particular that, although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position. In this context, the political parties play an essential role, which the Court explained in the following manner (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 90-92, ECHR 2004-I):

“92. While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes, including those protecting cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness, are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons

and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.”

787. The Court has warned, however, that the possibility could not be excluded that a political party, in pleading the rights enshrined in Article 11 and also in Articles 9 and 10 of the Convention, might attempt to derive therefrom the right to conduct what amounts in practice to activities intended to destroy the rights or freedoms set forth in the Convention and thus bring about the destruction of democracy. According to the Court’s case-law, in view of the very clear link between the Convention and democracy, no one must be authorised to rely on the Convention’s provisions in order to weaken or destroy the ideals and values of a democratic society. Pluralism and democracy are based on a compromise that requires various concessions by individuals or groups of individuals, who must sometimes agree to limit some of the freedoms they enjoy in order to guarantee greater stability of the country as a whole (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, § 99, ECHR 2003-II).

788. In this connection, the Court placed particular emphasis on the functioning of NGOs in a democratic society. It recently reasoned as follows (see *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], nos. 17224/11, §§ 86-87, 27 June 2017, references omitted):

“86. ... Indeed, the Court has accepted that when an NGO draws attention to matters of public interest, it is exercising a public watchdog role of similar importance to that of the press ... and may be characterised as a social “watchdog” warranting similar protection under the Convention as that afforded to the press ... It has recognised that civil society makes an important contribution to the discussion of public affairs ... It is also noteworthy that the Fundamental Principles on the Status of Non-Governmental Organisations cited at paragraph 45 above underline the important contribution of NGOs ‘to the development, realisation and continued survival of democratic societies’ and the need for such societies to ‘encourage [NGOs] to participate in ... mechanisms for dialogue, consultation and exchange’.

87. ... In the area of press freedom the Court has held that ‘by reason of the ‘duties and responsibilities’ inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism’ ... Recently, ... the Court affirmed that the same considerations would apply to an NGO assuming a social watchdog function ... A similar view is reflected in the Code of Ethics and Conduct for NGOs cited at paragraph 46 above, according to which ‘an NGO should not violate any person’s fundamental human rights’, ‘should give out accurate information ... regarding any individual’ and ‘the information that [an NGO] chooses to disseminate to ... policy makers ... must be accurate and presented with proper context’.”

789. With regard to lobbying activities, the Court has stressed the following (see *Koretskyy and Others v. Ukraine*, no. 40269/02, § 36, 3 April 2008, references omitted):

“The ability to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association’s aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions ...”

790. The Court also emphasised that restrictions on lobbying activities must be in accordance with the principle of “necessity” as guaranteed under Article 11 of the Convention (*ibid.*, § 52). Nevertheless, any public official confronted with inappropriate lobbying activities, in particular those of a corruptive nature, is expected to report such activities to the relevant authority (see *Matanović v. Croatia*, no. 2742/12, § 143, 4 April 2017).

791. Furthermore, in its case-law the Court has elaborated on the freedom of political speech and parliamentary debate. It held that the Convention establishes a close nexus between an effective political democracy and the effective operation of Parliament, making the effective functioning of Parliament a value of key importance for a democratic society (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, §§ 137 and 141, ECHR 2016 (extracts)). In connection with the freedom of political speech, the Court has stressed the following (references omitted):

“In its case-law, the Court has consistently underlined the importance of freedom of expression for members of parliament, this being political speech par excellence. ... [T]he Court held that ‘while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament ... calls for the closest scrutiny on the part of the Court’... These principles have been confirmed in a number of cases concerning freedom of expression of members of national or regional parliaments ... as well as in a series of cases concerning restrictions on the right of access to a court stemming from the operation of parliamentary immunity ...”

792. In the same context, the Court has emphasised the necessity of respecting the autonomy of Parliament concerning the adoption of rules of internal operation. More specifically, it has stressed that where the underlying purpose of the relevant disciplinary rules in Parliament was exclusively to ensure the effectiveness of Parliament, and hence that of the democratic process, the margin of appreciation to be afforded in this area should be a wide one, provided that it is exercised in keeping with the concepts of “effective political democracy” and “the rule of law” to which the Preamble to the Convention refers (*ibid.*, §§ 142, 146-147).

793. In this connection, it should also be noted that the Court has recognised that a politician, acting in his public capacity, must display a greater degree of tolerance concerning criticism. The Court, in particular, stressed (see *Oberschlick v. Austria (no. 2)*, 1 July 1997, § 29, *Reports of Judgments and Decisions* 1997-IV, references omitted):

“As to the limits of acceptable criticism, they are wider with regard to a politician acting in his public capacity than in relation to a private individual. A politician inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must display a greater degree of tolerance, especially when he himself makes public statements that are susceptible of criticism. He is certainly entitled to have his reputation protected, even when he is not acting in his private capacity, but the requirements of that protection have to be weighed against the interests of open discussion of political issues, since exceptions to freedom of expression must be interpreted narrowly ...”

794. Lastly, in the context of the functioning of an “effective and meaningful democracy governed by the rule of law”, the Court has placed a special emphasis on the right to free elections guaranteed under Article 3 of Protocol No. 1 (see *Karácsony and Others*, cited above, § 141). With regard to the allegations of irregularities in the electoral process, the Court stressed the following

(see *Davydov and Others v. Russia*, no. 75947/11, § 274-276, CEDH 2017 (extracts), references omitted):

“274. The Court has established that the existence of a domestic system for the effective examination of individual complaints and appeals in matters concerning electoral rights is one of the essential guarantees of free and fair elections. ...

275. The Court has also emphasised that it is important for the authorities in charge of electoral administration to function in a transparent manner and to maintain impartiality and independence from political manipulation ... and for their decisions to be sufficiently well reasoned ...

...

277. In this connection, the Court considers that in cases where it is alleged that the breach of the domestic legal rules was such that it seriously undermined the legitimacy of the election as a whole, Article 3 of Protocol No. 1 to the Convention requires it to assess whether such a breach has taken place and has resulted in a failure to hold free and fair elections. In doing so, the Court may have regard to whether an assessment in this respect has been made by the domestic courts; if it has been made, the Court may review whether or not the domestic courts' finding was arbitrary ...”

2. *Parliamentary immunity*

795. With regard to parliamentary immunity, in the case of *Kart v. Turkey* ([GC], no. 8917/05, §§ 80-83, ECHR 2009 (extracts)), the Court held as follows (references omitted):

“80. The Court has already held that when a State affords immunity to its MPs, the protection of fundamental rights may be affected ... That does not mean, however, that parliamentary immunity can be regarded in principle as imposing a disproportionate restriction on the right of access to a court as embodied in Article 6 § 1. Just as the right of access to a court is an inherent part of the fair trial guarantee in that Article, so some restrictions on access must likewise be regarded as inherent, an example being those limitations generally accepted by the Contracting States as part of the doctrine of parliamentary immunity ...

81. The Court has already acknowledged that the long-standing practice for States generally to confer varying degrees of immunity on parliamentarians pursues the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary ... Different forms of parliamentary immunity may indeed serve to protect the effective political democracy that constitutes one of the cornerstones of the Convention system, particularly where they protect the autonomy of the legislature and the parliamentary opposition.

82. The Court further notes that the regulation of parliamentary immunity belongs to the realm of parliamentary law, in which a wide margin of appreciation is left to member States. That being so, the creation of exceptions to parliamentary immunity, the application of which depended upon the individual facts of any particular case, would seriously undermine the legitimate aims pursued ...

83. However, from the point of view of its compatibility with the Convention, the broader an immunity, the more compelling must be its justification ... Indeed, the lack of any clear connection with parliamentary activity requires the Court to adopt a narrow interpretation of the concept of proportionality between the aim sought to be achieved and the means employed. This is particularly so where the restrictions on the right of access stem from the resolution of a political body ... Thus, where a personal quarrel was involved it would not be right to deny someone access to a court purely on the basis that the quarrel might be political in nature or connected with political activities ...”

796. Furthermore, in the case of *Karácsony and Others* (cited above, § 138), the Court reasoned as follows (references omitted):

“The guarantees offered by both types of parliamentary immunity (non-liability and inviolability) serve to ensure the independence of Parliament in the performance of its task. Inviolability helps to achieve the full independence of Parliament by preventing any possibility of politically motivated criminal proceedings (*fumus persecutionis*) and thereby protecting the opposition from pressure or abuse on the part of the majority ... The protection afforded to free speech in Parliament serves to protect the interests of Parliament as a whole and should not be understood as protection afforded solely to individual MPs ...”

797. With regard to reliance on parliamentary immunity in cases of corruption, the Court held that when prosecuting corruption offences “the States are encouraged to limit immunity to the degree necessary in a democratic society.” It also stressed that the States are required to provide appropriate measures to prevent individuals from being shielded from prosecution, in particular by allowing them to systematically present themselves as candidates in elections and thus giving them immunity from prosecution at least for a certain time (see *Uspaskich v. Lithuania*, no. 14737/08, §§ 98-99, 20 December 2016).

3. *Fight against corruption*

798. In its case-law, the Court has stressed the need for the prosecuting authorities to take effective measures for the suppression and prosecution of corruption given “the importance of thwarting the corrosive effect of corruption on the rule of law in a democratic society” (see *Matanović*, cited above, § 144).

799. Moreover, the Court has found that the domestic authorities enjoy a wide margin of appreciation when it comes to combating corruption in the public service, in particular with regard to measures aimed at the confiscation of the proceedings of crime (see *Gogitidze and Others v. Georgia*, no. 36862/05, § 114, 12 May 2015).

800. Likewise, in the context of the fight against corruption, in the case of *Wypych v. Poland* (dec.), no. 2428/05, 25 October 2005), the Court found that the relevant rules requiring the disclosure of details concerning a politician’s and his spouse’s financial situation and property portfolio pursued the legitimate aim of “the prevention of crime”, namely corruption, as provided for in Article 8 of the Convention. It also considered that these rules were “necessary in a democratic society” within the meaning of Article 8 of the Convention. In this connection, the Court stressed that “a decision to run for public office is an occasion when people knowingly or intentionally involve themselves in activities which are or may be recorded or reported in a public manner. Consequently, a person’s reasonable expectations as to privacy may be a significant, though not necessarily conclusive factor.” The Court also held the following:

“It is in the nature of the democratic political process that the electorate may legitimately be interested in the conduct of local councillors in the exercise of their public mandate. The issue of the financial situation of persons holding such office is one of legitimate public interest and concern. It is inevitable that local politicians will be subject to many forms of pressure or lobbying by various vested interests. Thus, the issues involved in the present case relate to the principles which should govern their conduct and to the manner in which the public can scrutinise the local political process. In the Court’s opinion, these are important issues which may give rise to serious public discussion. ...”

4. Whistleblowers

801. In the case of *Guja v. Moldova* ([GC], no. 14277/04, §§ 69-96, ECHR 2008) the Court elaborated on the right to freedom of expression in the workplace. In particular, in assessing whether the relevant restrictions and limitations were “necessary in a democratic society”, within the meaning of Article 10 of the Convention, the Court held that the following considerations should be taken into account:

- the motive behind the actions of the employee;
- the authenticity of the information disclosed;
- the availability of other effective, but more discreet, means of remedying the wrongdoing which the reporting employee intended to uncover;
- the damage suffered by the employer;
- the public interest in the disclosed information.

B. GRECO

1. Criminal Law Convention on Corruption

802. The relevant parts of the Criminal Law Convention on Corruption (ETS No. 173) of 27 January 1999³⁹⁶ provide as follows:

“Preamble

...

Emphasising that corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society;

...

Chapter II – Measures to be taken at national level

Article 2 – Active bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.

Article 3 – Passive bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

Article 4 – Bribery of members of domestic public assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any

³⁹⁶ Available at <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5> (last accessed on 15 February 2018). See also the additional Protocol (available at <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/191>, last accessed on 15 February 2018).

person who is a member of any domestic public assembly exercising legislative or administrative powers.

...

Article 9 – Bribery of officials of international organisations

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any official or other contracted employee, within the meaning of the staff regulations, of any public international or supranational organisation or body of which the Party is a member, and any person, whether seconded or not, carrying out functions corresponding to those performed by such officials or agents.

Article 10 – Bribery of members of international parliamentary assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Article 4 when involving any members of parliamentary assemblies of international or supranational organisations of which the Party is a member.

...

Article 12 – Trading in influence

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.”

2. Civil Law Convention on Corruption

803. The relevant parts of the Civil Law Convention on Corruption (ETS No. 174) of 4 November 1999³⁹⁷ provide as follows:

“Article 2 – Definition of corruption

For the purpose of this Convention, ‘corruption’ means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.

...

Article 5 – State responsibility

Each Party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-state Party, from that Party’s appropriate authorities.

...

Article 9 – Protection of employees

Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.”

³⁹⁷ Available at <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/174> (last accessed on 15 February 2018).

3. Other relevant GRECO standards

(a) Prevention of corruption in respect of members of parliament

804. GRECO's fourth evaluation round examined prevention of corruption in respect of, *inter alia*, members of parliament.³⁹⁸ In its work, GRECO stressed that identifying and addressing the conflict of interest was at the heart of its examination of corruption prevention with respect to members of parliament MPs. In this respect GRECO recommended extending MPs' financial and outside interests reporting, establishing or enhancing the range of activities that could be considered to conflict with MPs' decision-making processes, and emphasising the importance of MPs' duty to self-regulate, in particular by making *ad hoc* declarations. The key preventive measures in this context – prohibiting certain activities (repressive measures) or requiring high visibility in the process of decision-making (transparency) – address the conflict of interest before they undermine the legitimacy of MPs' decisions or allow more serious corruption to take root.

805. GRECO further insisted on collecting information from MPs about their financial assets, income, and liabilities at the start of their service as an MP. This information should typically be made available to the public. In this respect the following specific recommendations were made: expanding the scope of information to benefits such as gifts, travel, and unpaid directorships (non-pecuniary interests); including all assets, income and liabilities above a certain threshold or indeed lowering the threshold to capture more relevant information; and increasing the level of detail required (including quantitative information) with respect to significant assets, including shareholdings, as well as MPs' liabilities. GRECO also recommended extending declaration requirements to MPs' spouses and close family members, taking into account the privacy concerns. Moreover, to make transparency effective, GRECO recommended a timely publication of information that was both up-to-date and easily accessible to the public.

806. GRECO recommended the development, clarification and adoption of rules on the acceptance of gifts and other benefits such as in-kind travel or hospitality, or addressing these topics in MPs' codes of conduct. The rules in this respect should be clear and guidance should be provided on when the benefits received were not directly connected to parliamentary work. Moreover, the value thresholds that trigger such requirements should not be too high as that could result in non-reporting of a range of benefits that create a conflict of interest or lead to circumvention of other integrity standards. GRECO also recommended that all MPs know the relevant rules on receiving gifts and other benefits; receive continuing guidance on how to translate these into daily practice; understand what corrective or disciplinary action can be taken for violations, and take collective responsibility as an institution for ensuring that such action is taken.

807. GRECO's interest was also focused on preventing, detecting and penalising the conflict of interest among MPs. It adhered to the definition of a conflict of interest as "a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties." In this connection, GRECO stressed

³⁹⁸ See further Seventeenth General Activity Report (2016) of the Group of States against Corruption (GRECO): Anti-corruption trends, challenges and good practices in Europe & the United States of America, Strasbourg, 20-24 March 2017; available at <https://rm.coe.int/seventeenth-general-activity-report-2016-of-the-group-of-states-against/168071c885> (last accessed on 15 February 2018). See also GRECO's publication on the conclusions and trends following its fourth evaluation round "Corruption Prevention: Members of Parliament, Judges and Prosecutors", Strasbourg, October 2017; available at <https://rm.coe.int/rma/dri/objectid/09000016807638e7> (last accessed on 15 February 2018).

that MPs' personal interests might "conflict" with the public interest when passing laws and scrutinising government policy. GRECO was concerned with the situation in countries which did not have a written definition of a conflict of interest or rules for disclosing potential conflicts; where the systems were based on voluntary abstention (from voting, for example) and scrutiny by the public and the electorate. In other cases, GRECO observed that the provisions and regulations on this matter required further development with a clear and written definition of the conflict of interest, detailed guidelines, practical examples and specific requirements of *ad hoc* disclosure.

808. In its work GRECO issued a number of recommendations for the development of guidelines for MPs on their interaction with lobbyists and other third parties. GRECO in particular stressed the need to address conduct in relation to those wishing to influence legislative activities in codes of conduct and related guidance for MPs.

809. GRECO commended clear, strict and well-understood rules on accessory activities by MPs in most of its member States. It emphasised in particular the need for a system of enforcement of such restrictions. These restrictions normally apply to MPs' employment or other activities after leaving parliament. GRECO raised serious concerns about the influence of business on national legislative and regulatory agendas and of MPs moving into positions in private-sector entities that had been highly interested in and affected by the areas of parliamentary responsibilities of the newly hired MPs.

810. GRECO also insisted on the adoption, elaboration and implementation of a code of conduct for MPs. It stressed that such a code of conduct should be a living document, namely part of a broader integrity framework with an institutional framework for implementation, awareness-raising, and advice, as well as strong enforcement. Moreover, GRECO held that including in the code or elsewhere clear investigatory and enforcement procedures was as much a safeguard for MPs and for the body of parliament as it was a reassurance to the public.

811. In its recommendations, GRECO placed emphasis on public access to information on the functioning of parliamentary activities. It stressed that ensuring public access to information enhanced accountability, supported effective civic engagement, helped monitor the range and number of external contributions, and encouraged MPs to be proactive and responsive in their efforts to raise the quality and impact of law and policy. The importance of transparency in parliamentary committees was another topic addressed by GRECO. Given the importance of the work of committees in the parliamentary processes, GRECO recommended safeguarding open and accountable meetings, including ensuring the timely availability of, for instance, meeting agendas, lists of participants and minutes of meetings. It warned of the need to guard against unwarranted use of discretionary powers or special rules to limit access. With regard to closed committee meetings, GRECO also warned that they did not serve the public interest; nor did they ensure the prevention of corruption within parliaments.

812. GRECO insisted in its work on the need for MPs to take more responsibility for raising expectations and maintaining high standards of ethical conduct among their ranks. The prevalent idea that MPs needed only informally to monitor each other was not considered satisfactory and realistic. GRECO has in particular recommended clarity and consistency in the existing systems of measures concerning the observance of ethical standards. It was very critical of those instances where parliaments had not taken enough responsibility for addressing MPs' misconduct. It found it unacceptable that an MP could refuse to resign despite being found in breach of incompatibility rules, with little or no action being taken by the respective parliament to enforce the appropriate

sanction. GRECO also considered that, where established, independent authorities to monitor the conflict of interest or/and standards of conduct needed to be properly resourced and supported.

(b) Immunities

813. In its first evaluation round, GRECO placed considerable emphasis on the matter of immunities, in particular on the various categories of officials enjoying immunity and the procedures for lifting immunity.³⁹⁹ It reflected, in particular, on Principle 6 of the CM-COE Resolution (97) 24 on the “Twenty Guiding Principles for the Fight against Corruption”, which aimed “to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society”.

814. With regard to the categories of officials enjoying immunity, according to GRECO’s standards, compliance with Guiding Principle 6 requires that the categories of professionals benefiting from immunity be limited to a minimum. This means that Heads of State, parliamentarians (not including candidates for parliament), as well as some other officials, such as judges, may be covered by immunity. As to the procedures for lifting immunity, GRECO recommended that such procedures should be clear, objective, swift and transparent.⁴⁰⁰

815. In the fourth evaluation round, GRECO also dealt with the issue of immunities of members of parliament. In this connection, it stressed that in some cases the interaction between criminal law, formal rules on parliamentary immunity and, more specifically, the process by which some parliaments were involved in lifting immunity, had given rise to the perception that MPs were somehow exempt from punishment, particularly when it came to corruption offences. GRECO required that obstructions to the proper investigation of alleged corruption offences committed by MPs or their associates be removed while ensuring that MPs were able to avail themselves of all the legal rights and evidentiary safeguards available to any accused person.

C. MONEYVAL

816. MONEYVAL’s⁴⁰¹ fifth round of mutual evaluations for States and territories which are subject to its evaluation procedures was carried out in order to assess their compliance with the relevant FATF AML/CFT standards,⁴⁰² set out in the 2012 FATF Recommendations on “International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation”.⁴⁰³

³⁹⁹ See Fifth General Activity Report (2004) of the Group of States against Corruption (GRECO), Strasbourg, 18 March 2005 (available at <https://rm.coe.int/16806cb87c>, last accessed on 15 February 2018).

⁴⁰⁰ See a summary of the relevant principles in GRECO, Lessons learnt from the three Evaluation Rounds (2000-2010): Thematic Articles, pp. 41-46 (available at <https://rm.coe.int/16806cbfc6>).

⁴⁰¹ MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems.

⁴⁰² FATF is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standards.

⁴⁰³ Available at <https://rm.coe.int/international-standards-on-combating-money-laundering-and-the-financin/16807150db> (last accessed on 15 February 2018).

817. The relevant part of the FATF Recommendations, concerning politically exposed persons,⁴⁰⁴ reads as follows:

“12. Politically exposed persons

Financial institutions should be required, in relation to foreign politically exposed persons (PEPs) (whether as customer or beneficial owner), in addition to performing normal customer due diligence measures, to:

(a) have appropriate risk-management systems to determine whether the customer or the beneficial owner is a politically exposed person;

(b) obtain senior management approval for establishing (or continuing, for existing customers) such business relationships;

(c) take reasonable measures to establish the source of wealth and source of funds; and

(d) conduct enhanced ongoing monitoring of the business relationship.

Financial institutions should be required to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or a person who is or has been entrusted with a prominent function by an international organisation. In cases of a higher risk business relationship with such persons, financial institutions should be required to apply the measures referred to in paragraphs (b), (c) and (d).

The requirements for all types of PEP should also apply to family members or close associates of such PEPs.”

818. FATF Guidance on politically exposed persons (Recommendations 12 and 22)⁴⁰⁵ define politically exposed persons (PEP) as persons with “prominent public functions.” The following sub-categories of PEPs are recognised:

Foreign PEPs: individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.

Domestic PEPs: individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.

International organisation PEPs: persons who are or have been entrusted with a prominent function by an international organisation, refers to members of senior management or individuals who have been entrusted with equivalent functions, i.e. directors, deputy directors and members of the board or equivalent functions.

Family members are individuals who are related to a PEP either directly (consanguinity) or through marriage or similar (civil) forms of partnership.

Close associates are individuals who are closely connected to a PEP, either socially or professionally”

819. Further relevant guiding principles on politically exposed persons provide:

⁴⁰⁴ See further, World Bank, “Using Asset Disclosure for Identifying Politically Exposed Persons” (available at <http://documents.worldbank.org/curated/en/155361468147553496/pdf/706920ESWOP1140rOPEP0identificat ion.pdf>, last accessed on 15 February 2018), and StAR (Stolen Asset Recovery Initiative) publications “The Puppet Masters How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It” (available at <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>, last accessed on 15 February 2018) and “Politically Exposed Persons: Preventive Measures for the Banking Sector” (available at https://star.worldbank.org/star/sites/star/files/Politically%20Exposed%20Persons_0.pdf, last accessed on 15 February 2018)

⁴⁰⁵ Available at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf> (last accessed on 15 February 2018).

“B. TIME LIMITS OF PEP STATUS

44. Recommendation 12 also defines a PEP as being someone who has been (but may no longer be) entrusted with a prominent public function. The language of Recommendation 12 is consistent with a possible open ended approach (i.e., “once a PEP – could always remain a PEP”). ...

45. The risk based approach requires that financial institutions and DNFBPs assess the ML/TF risk of a PEP who is no longer entrusted with a prominent public function, and take effective action to mitigate this risk. Possible risk factors are:

the level of (informal) influence that the individual could still exercise; the seniority of the position that the individual held as a PEP; or

whether the individual’s previous and current function are linked in any way (e.g., formally by appointment of the PEPs successor, or informally by the fact that the PEP continues to deal with the same substantive matters).

...

VIII. OTHER ISSUES

A. IMMUNITY FROM PROSECUTION AND CONVICTION

108. A common misconception is that PEPs who may enjoy immunity from prosecution and conviction (for example, Heads of State who, during their term of office, are immune from prosecution for actions committed prior to their taking office; or diplomats who are immune from prosecution and conviction in the countries where they are posted), are therefore exempt from the requirements of Recommendation 12. However, this is not the case. PEPs are not immune from the application of the requirements of Recommendation 12 or from being the subject of the obligation to report suspicious transactions pursuant to Recommendation 20. Although immunity may slow down or prevent the criminal prosecution and conviction of such PEPs, a STR may trigger an investigation which could identify other persons without immunity who are involved in criminal activity, and who could be prosecuted immediately (e.g., co-conspirators or accomplices). In addition, the PEP may lose the immunity from domestic prosecution at a later stage, at which point a criminal investigation could be opened or continued.

109. In addition, in light of the expanding modern doctrine of immunity, under which criminal activities are not considered to fall within official acts of state and under which even high state officials have personal criminal responsibility for such criminal activities, criminal immunity should not simply be assumed to exist.”

D. The Venice Commission

1. *Extra-institutional actors in a democratic system (lobbying)*

820. In response to a request from the Parliamentary Assembly,⁴⁰⁶ in 2013 the Venice Commission⁴⁰⁷ produced a report on “the role of extra-institutional actors in a democratic system.”⁴⁰⁸ The report adopted a general definition of lobbying as “‘the oral or written communication’ by private individuals or groups, each with varying and specific interests, ‘with a public official to influence legislation, policy or administrative decisions’. The attempt to influence may or may not be successful – it is the act of actors attempting to influence public actors that is

⁴⁰⁶ See PACE Resolution 1744 (2010).

⁴⁰⁷ The Venice Commission is a Council of Europe institution providing legal advice to its member states and, in particular, helps states wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law.

⁴⁰⁸ Available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)011-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)011-e) (last accessed on 15 February 2018).

essential.” In addition to this definition, two further features of lobbying were identified: (1) it is carried out by an extra-institutional actor, namely an entity or person who is not, in doing so, exerting public authority or fulfilling a constitutional mandate; and (2) it usually involves the lobbyists receiving directly or indirectly consideration for his or her services.

821. The Venice Commission observed that lobbyists could seek to influence political decisions in different ways, such as: direct communication with both politicians and civil servants; offering advice or presentations to officials, either on an ad hoc or regular basis; giving draft reports to public officials where specific details of policy itself are drafted; pursuing informal contacts with individual politicians or civil servants branches, including having simple telephone conversations with such personnel; formal, or invited, consultation through institutionalised channels; participation in hearings, such as parliamentary committees; participation in a delegation or conference; solicited or unsolicited sending of information or documents to politicians and civil servants.

822. The Venice Commission also found that the *aquis* of the ECHR, and more broadly of the Council of Europe in the field of democracy, were *a priori* favourable to the involvement of civil society in the conduct of public affairs. However, it followed from those standards that lobbying was not an unmitigated good thing, and that States have a wide margin of discretion in taking measures to prevent the distortion of the political process. Accordingly, it was considered that the participation of extra-institutional actors in the political process carried both opportunities and risks, and that it could be beneficial only “under some conditions.”

823. The Venice Commission pointed out that potential negative impacts of lobbying – particularly the concerns regarding accountability and transparency – could be addressed by regulating lobbyists’ actions. This meant the adoption of a codified legal framework which could be enforced in order to guarantee transparency in policy-making. Any interest group that pursues lobbying activity in breach of these rules would risk sanctions such as fines or even criminal sanctions.

824. The following components of lobbying regulation were identified: (1) lobbyists must register with the State before contact can be made with any public official; (2) lobbyists must clearly indicate which ministry/public actors he or she intends to influence; (3) lobbyists must clearly outline individual and/or employer spending disclosures; (4) there must be a publicly available list with lobbyists’ details available for citizens to scrutinize; (5) there must be a lobbying supervisory authority that performs periodic audits and enforces the lobbying regulation, and sanctions lobbyists who do not register or who give misinformation; and (6) former public officials cannot immediately work as lobbyist once they have left public office (‘cooling off’ period or ‘revolving-door’ provisions).

825. In conclusion, the Venice Commission stressed that, irrespective of various advantages and potential disadvantages of lobbying regulation, the regulation of lobbying activities was a suitable response both to strengthening the positive aspects lying in the role of extra-institutional actors and to countering the drawbacks, if not threats to the democratic process, that lobbying might entail.

2. Immunities

826. In its Report on the “Regime of Parliamentary Immunity” (1996)⁴⁰⁹ the Venice Commission reached the following conclusions:

⁴⁰⁹ Available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(1996\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(1996)007-e) (last accessed on 15 February 2018).

“99. On balance, the system established to protect parliamentarians' freedom of expression is fairly uniform in the various countries considered. Except in cases of racist utterances by members, this particular aspect of immunity is not substantially debated or challenged.

100. Immunity in the form of inviolability, however, appears more complex and generates a wider variety of legal provisions.

101. The institution of immunity as such is not in fact a subject of passionate debate in most countries surveyed. It reappears as a topical issue on the occasion of proceedings against members, particularly for corruption.

102. Parliamentary immunity continues to be an institution which assures members of their independence from other powers and their freedom of action and expression, although the relationship between the characteristics of the various powers has evolved considerably in the parliamentary democracies. It also protects parliamentarians from possible abuses by the majority.

103. But while the necessary compliance with the principle of separation of powers and the expression of the common will render it expedient to lay down specific rules for the protection of parliamentarians, it would be inconsistent with the principles of parliamentary democracy to make members immune from punishment for offences committed. The immunity thus instituted must, of course, not be such as to obstruct the course of justice.

104. In actual fact, the extent of the protection provided largely depends on parliamentary practice but also on the role of public opinion and the development of attitudes. The role of the press, together with a certain ethical sense, accordingly have a decisive effect on the application of the parliamentary immunity system.

105. Finally, in certain countries a tendency to regulate in law the conditions for lifting parliamentary immunity can be observed, or else an effort to define fixed, objective criteria as far as possible. This trend is prompted by concern for stricter application of the principles of rule of law and by the demands of safeguarding fundamental freedoms.”

827. In a report entitled “Scope and Lifting of Parliamentary Immunities” (2014),⁴¹⁰ responding to a request from the Council of Europe Secretary General to develop criteria and guidelines on the lifting of parliamentary immunity, the Venice Commission, in cooperation with an expert of GRECO, developed the following guidelines:

“A. Criteria and guidelines for non-liability

...

177. Parliamentary non-liability may be limited (a) through specific exemptions (substantive limitation) or (b) through a possibility for parliament to lift it (procedural limitation).

178. The Venice Commission considers that both models are legitimate but model (a) is preferable since it means that limits to non-liability will be laid down by law and subject to judicial review.

179. Substantive limits on the freedom of speech of parliamentarians should apply only if at all to statements of a particularly grave nature, and should always be weighed against the overriding requirement of ensuring free political debate in parliament.

180. If parliament is given the competence to lift the non-liability of its members, then this should be exercised with great restraint, and following the same procedural rules and principles as outlined below for cases of inviolability.

181. The protection of parliamentary non-liability should by its nature not be limited in time, but remain in place after the parliamentarian has left office.

182. The non-liability of members of parliament should not extend to opinions or behaviour that does not have a direct link to their parliamentary functions.

⁴¹⁰ Available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)011-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)011-e) (last accessed on 15 February 2018).

183. Non-liability should not exclude internal disciplinary sanctions in parliament, as long as these are clear and proportional, and not misused by the parliamentary majority.

B. Criteria and guidelines for inviolability

184. The Venice Commission considers that rules on parliamentary inviolability are not a necessary part of modern democracy. In a well-functioning political system, members of parliament enjoy adequate protection through other mechanisms, and do not need special immunity of this kind.

185. The Venice Commission however recognises that rules on inviolability may in some countries fulfil the democratic function of protecting parliament as an institution, and in particular the parliamentary opposition, from undue pressure or harassment from the executive, the courts or from other political opponents.⁴¹¹ Rules on parliamentary inviolability may therefore be justifiable where other means of protection of members of parliament are not adequate. But they should always be construed and applied in a restrictive manner. Such rules should be subject to limitations and conditions, and there should always be the possibility of lifting immunity, following clear and impartial procedures.

186. Countries that have rules on parliamentary inviolability should assess these, in order to evaluate how they function and whether they are still justified and appropriate in a present day context, or whether they should be reformed. If a country chooses to maintain such rules, then these should preferably be revised to take into account the following criteria and guidelines.

Criteria for regulating the scope of parliamentary inviolability

187. National rules on parliamentary inviolability should:

- be subject to limitations laid down in law or parliamentary rules of procedure
- be of a temporal nature, so that proceedings can be brought at a later stage
- be possible to lift, following clear and impartial procedures
- not protect against preliminary investigations of the case concerned
- not apply if the member is caught *in flagrante delicto*
- not apply to particularly serious criminal offences
- not apply to minor or administrative offences.

Criteria for assessing whether parliamentary inviolability should be lifted:

188. When determining whether parliamentary inviolability should be lifted or not in a given case the following criteria should be taken into consideration.

Criteria for maintaining inviolability:

- when the allegations are clearly and obviously unfounded
- when the alleged offence is an unforeseen consequence of a political action
- when the allegations are clearly brought for partisan-political motives (*fumus persecutionis*) in order to harass or intimidate a member of parliament or interfere with his or her mandate
- when legal proceedings would seriously endanger the democratic functions of parliament or the basic rights of any member or group of members.

189. *Criteria for lifting inviolability:*

- when the request for lifting is based on sincere, serious and fair grounds
- when the member concerned is caught *in flagrante delicto*
- when the alleged offence is of a particularly serious nature

⁴¹¹ In its Opinion on draft constitutional amendments on the immunity of Members of Parliament and judges of Ukraine, 19-20 June 2015, the Venice Commission stressed that “[f]ighting corruption is indeed a major justification for restricting parliamentary inviolability. However, in a political system, with a fragile democracy such as in Ukraine, where, as the Venice Commission was informed, judicial corruption is widespread, a complete removal of inviolability can be dangerous for the functioning and the autonomy of Parliament” (available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)013-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)013-e) last accessed on 15 February 2018).

- when the request concerns a criminal conduct which is not strictly related to the performance of parliamentary functions but concerns acts committed in relation to other personal or professional functions

- when proceedings should be allowed in order not to obstruct justice
- when proceedings should be allowed in order to safeguard the authority and legitimacy of parliament

- when the member concerned requests that immunity be lifted

190. In any given case the relevant considerations should be weighed against each other. If the request is based on sincere and serious grounds, and if there is no reason to *suspect fumus persecutionis*, then there should be a strong presumption in favour of lifting inviolability. The basic test should be that inviolability should only be maintained in cases where this is justified with reference to specific considerations and proportionate and necessary in order to safeguard the effective democratic workings of parliament or the rights of any member or group of members.

Guidelines for regulating the procedure for lifting parliamentary inviolability

191. Rules on parliamentary inviolability should always include procedures prescribing how this may be lifted. Such procedures should be clearly regulated and should comply with general principles of procedural law, including rights of both parties to be heard. They should be comprehensive, clear and predictable, and the procedure should be transparent and known to the public. At the same time, such procedures should not be made to resemble judicial proceedings, and under no circumstances should they assess the question of guilt, which is for the courts alone to decide. The procedures should always respect the principle of the presumption of innocence, as protected by the ECHR.

...

193. If the competence to lift inviolability remains with the national parliament, then the procedures for this should be reviewed, in order to evaluate how they function and whether they live up to present day requirements, or whether they should be reformed. Inspiration in this regard may be drawn from Rule 7 of the Rules of Procedure of the European Parliament and Rule [69] of the Rules of Procedure of the Parliamentary Assembly of the Council of Europe.

..."

E. Other international material

1. United Nations

828. A comprehensive set of measures for fighting corruption at the global level is set out in the UN Convention Against Corruption (A/58/422, 31 October 2003),⁴¹² which, in the relevant part, provides:

Article 2. Use of terms

“For the purposes of this Convention:

(a) “Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party. ...

⁴¹² Available at:

https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-14&chapter=18&lang=en
(last accessed on 15 February 2018)

(b) “Foreign public official” shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;

(c) “Official of a public international organization” shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;

...”

Article 8. Codes of conduct for public officials

“1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.^[413]

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.”

829. In the context of its effort to fight corruption, the UN adopted the Institutional Integrity Initiative entitled “Practicing what we preach: The relevance of the United Nations Convention against Corruption to the UN System” aimed at examining how the integrity rules and regulations of United Nations Chiefs Executive Board (CEB) members can be aligned with the principles of the UN Convention against Corruption.⁴¹⁴ In adopting the Initiative, the UN wanted to send a clear message that it would strive to abide by the same standards as States had set for themselves.

⁴¹³ Available at <http://www.un.org/documents/ga/res/51/a51r059.htm> (last accessed on 15 February 2018).

⁴¹⁴ Available at https://www.unodc.org/unodc/en/corruption/tools_and_publications/institutional-integrity-initiative.html (last accessed on 15 February 2018).

2. Council of Europe

(a) Parliamentary Assembly

(i) *Prevention of corruption and fostering of interests*

830. In Resolution 1214 (2000) on the “Role of parliaments in fighting corruption” of 5 April 2000⁴¹⁵, the Parliamentary Assembly stressed the following guiding principles in the work of parliaments:

a. ensure that state institutions - including parliaments themselves - are so transparent and accountable as to be able to withstand corruption or permit its rapid exposure;

b. instil in their own ranks the notion that parliamentarians have a duty not only to obey the letter of the law, but to set an example of incorruptibility to society as a whole by implementing and enforcing their own codes of conduct;

c. introduce an annual system for the establishment of a declaration of financial interests by parliamentarians and their direct family;

d. create clear and fair legislation, including efficient public supervision, as regards the funding of political parties and election campaigns. The proper declaration of sources of income and of potential conflicts of interest is particularly important;

e. safeguard the strength of civil liberties, in particular press freedom and the ability of citizens to form associations for informing the public, including through freedom of information acts;

f. protect the independence of the judiciary and the media;

g. have all public expenditure, revenue collection and public procurement checked either by an independent auditing body or, where necessary for state security or other reasons, by a competent parliamentary instance. It is also important to check the system for vetting the activities and credibility of NGOs receiving government grants;

h. take special measures to protect the position and career prospects of “whistleblowers”, that is to say, officials who unmask and report cases of corruption; and establish, where this has not yet been done, a code of conduct for civil servants and public officials;

i. enact legislation providing for adequate and precise sanctions against those who engage in corruption;

j. as far as possible, simplify regulations, permits, administrative procedures and the like, since these open up possibilities to exact or receive bribes;

k. resolutely fight organised crime, given its role as a primary vehicle for corruption;

l. enhance competition in economic life through clear and fair legislation, by taking a firm stand against monopolies and oligopolies, by reducing subsidies to companies and economic sectors, and by enhancing public scrutiny over the launching and implementation of public projects;

m. in view of the growing international dimension of corruption, support international co-operation instruments such as those outlined in paragraph 3 above;

⁴¹⁵ Available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16794&lang=en> (last accessed on 15 February 2018). See also a PACE publication entitled “Handbook for Parliamentarians: Introduction to the activities of the PACE anti-corruption platform” (available at <http://website-pace.net/documents/19895/585401/20140625-HandbookPlatformCorruption-EN.pdf/d6bbdea0-f3d4-4160-9e3a-b284bb4d8d95>, last accessed on 15 February 2018), and the Final Report of the PACE seminars on “Codes of conduct for parliamentarians and the prevention of corruption” (available at <http://website-pace.net/documents/19895/585401/20140701-RomeCodeConductSeminar-EN.pdf/707ef3cd-ea7f-479a-8717-24e2189a4b23>, last accessed on 15 February 2018) and “Mechanisms available to National Parliaments to Counter Corruption” (available at <http://website-pace.net/documents/19895/585401/20131202-BelgradeCorruptionSeminar-EN.pdf/cd1e5db4-5f50-4024-95a9-4846f6b67cca>, last accessed on 15 February 2018).

n. engage civil society in an ongoing debate on corruption from school onwards and involve it in the progress made in the fight against corruption.”

831. Resolution 1546 (2007) of 17 April 2007 concerning “The code of good practice for political parties”⁴¹⁶ invited the Venice Commission to draw up a code of good practice for political parties on the basis of, *inter alia*, the following principles:

- “13.3. good practices for the financing of political parties and the funding of electoral campaigns:
 - 13.3.1. developing internal rules which complete and strengthen national legislation on financing of political parties and funding of electoral campaigns, in particular, regarding transparency and accountability;
 - 13.3.2. developing internal rules, complementary to national legislation, enabling monitoring of the financial status of elected representatives before, during and after their term of office;
 - 13.3.3. ensuring transparency, high standards of conduct and sound management in parties’ public performance in order to maintain the confidence of citizens;
 - 13.3.4. reinforcing and supporting preventive and repressive measures aimed at combating corruption;
 - 13.3.5. setting up independent disciplinary bodies to investigate and apply sanctions to corruption within parties;
 - 13.3.6. strengthening evaluation, monitoring and disciplinary processes;
- ...
- 13.5. good practices for external and institutional accountability:
 - 13.5.1. ensuring public accountability by implementing transparency, high standards of conduct and sound management in their public performance;
 - 13.5.2. reinforcing preventive measures as well as procedures for enforcement, namely evaluation, monitoring procedures and disciplinary measures;
 - 13.5.3. monitoring and reporting systematically on results achieved by party representatives in public institutions;
 - 13.5.4. keeping citizens informed of the fulfilment of electoral promises by, *inter alia*, providing the public with an assessment of the party programme and indicating to what extent it has been translated into public policies;
 - 13.5.5. making the electoral programme available on the party’s website during the length of its legislative mandate in order to enable public scrutiny;
 - 13.5.6. disclosing details of pre-selection and key decision-making procedures upon official registration of the party;
 - 13.5.7. providing for the disclosure of politicians’ assets before, during and after having served in public administration; ...”

832. On 26 April 2010 the Parliamentary Assembly adopted Recommendation 1908 on “Lobbying in a democratic society (European code of good conduct on lobbying)”⁴¹⁷ in which it stressed the following principles:

⁴¹⁶ Available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17529&lang=en> (last accessed on 15 February 2018). See also Recommendation 1516 (2001) of 22 May 2001 on “Financing of political parties” (available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16907&lang=en>, last accessed on 15 February 2018) and Resolution 1736 (2010) of 21 May 2010 on “Code of good practice in the field of political parties” (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17866&lang=en>, last accessed on 15 February 2018).

⁴¹⁷ Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17832&lang=en> (last accessed on 15 February 2018)

“11.1. lobbying should be very clearly defined, differentiating between lobbying as a professionally compensated activity and the activities of civil society organisations, not forgetting self-regulating entities in different economic sectors;

11.2. transparency in the field of lobbying should be enhanced;

11.3. rules applicable to politicians, civil servants, members of pressure groups and businesses should be laid down, including the principle of potential conflicts of interest and the period of time after leaving office during which carrying out lobbying activities should be banned;

11.4. entities involved in lobbying activities should be registered;

11.5. prior consultations should be held with lobbying organisations on any draft legislation in this field;

11.6. well-defined, transparent, honest lobbying should be encouraged so as to improve the public image of persons involved in these activities.”

833. In Resolution 1744 (2010) on “Extra-institutional actors in the democratic system” of 23 June 2010⁴¹⁸ the Parliamentary Assembly stressed the positive aspects of the activities of extra-institutional actors, but warned of the potential risks involved when the balance of interests was altered in normal political processes.

834. Resolution 1943 (2013)⁴¹⁹ and Recommendation 2019 (2013)⁴²⁰ on “Corruption as a threat to the rule of law” of 26 June 2013 recognise corruption as a major threat to the rule of law. The relevant part of Resolution 1943 (2013) reads as follows:

“2. Corruption jeopardises the good functioning of public institutions and diverts public action from its purpose, which is to serve the public interest. It disrupts the legislative process, affects the principles of legality and legal certainty, introduces a degree of arbitrariness in the decision-making process and has a devastating effect on human rights. Furthermore, corruption undermines citizens’ trust in the institutions.

3. The Council of Europe, its Parliamentary Assembly and its member States must remain at the forefront of the fight against corruption.

...

12. In order to set a good example, the Assembly resolves to pay special attention to the effective implementation of its own code of conduct.”

(ii) Immunities of the members of the Assembly

835. The immunities of members of PACE are primarily regulated under the General Agreement on Privileges and Immunities of the Council of Europe (of 2 September 1949) and its Additional Protocol (of 6 November 1952).⁴²¹ The relevant part of the General Agreement on Privileges and Immunities of the Council of Europe provides as follows:

⁴¹⁸ Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17884&lang=en> (last accessed on 15 February 2018)

⁴¹⁹ Available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19948&lang=en> (last accessed on 15 February 2018).

⁴²⁰ Available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19951&lang=en> (last accessed on 15 February 2018).

⁴²¹ Available at <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/002> (last accessed on 15 February 2018). It should be noted that Rule 69 of the Rules of Procedure contains a footnote reference to Articles 13 to 15 of the General Agreement and Articles 3 and 5 of the cited Protocol. See, however, Report no. 9718 on “Immunities of Members of the Parliamentary Assembly”, para. 59-61 (available at <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10070&lang=EN>, last accessed on 15 February 2018) in which it is asserted that Article 5 of the Protocol is not binding on the Parliamentary Assembly but that it, nevertheless, adheres to the principles underlying this text.

“Part V – Representatives to the Consultative Assembly

Article 13

No administrative or other restriction shall be imposed on the free movement to and from the place of meeting of Representatives to the Consultative Assembly and their substitutes. Representatives and their substitutes shall, in the matter of customs and exchange control, be accorded:

- a by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official duty;
- b by the governments of other members, the same facilities as those accorded to representatives of foreign governments on temporary official duty.

Article 14

Representatives to the Consultative Assembly and their substitutes shall be immune from all official interrogation and from arrest and all legal proceedings in respect of words spoken or votes cast by them in the exercise of their functions.

Article 15

During the sessions of the Consultative Assembly, the Representatives to the Assembly and their substitutes, whether they be members of Parliament or not, shall enjoy:

- a on their national territory, the immunities accorded in those countries to members of Parliament;
- b on the territory of all other member States, exemption from arrest and prosecution.

This immunity also applies when they are travelling to and from the place of meeting of the Consultative Assembly. It does not, however, apply when Representatives and their substitutes are found committing, attempting to commit, or just having committed an offence, nor in cases where the Assembly has waived the immunity.”

836. The cited Protocol to the General Agreement, in the relevant part, provides as follows:

“Article 3

The provisions of Article 15 of the Agreement shall apply to Representatives to the Assembly, and their Substitutes, at any time when they are attending or travelling to and from, meetings of committees and sub-committees of the Consultative Assembly, whether or not the Assembly is itself in session at such time.

...

Article 5

Privileges, immunities and facilities are accorded to the representatives of members not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions in connection with the Council of Europe. Consequently, a member has not only the right but the duty to waive the immunity of its representative in any case where, in the opinion of the member, the immunity would impede the course of justice and it can be waived without prejudice to the purpose for which the immunity is accorded.”

837. Further issues related to the immunities of PACE members are regulated under Rule 69 of the Rules of Procedure, which provides as follows:

“69.1. The members of the Assembly enjoy the privileges and immunities provided for in the General Agreement on Privileges and Immunities of the Council of Europe (of 2 September 1949) and its Additional Protocol (of 6 November 1952). These immunities are granted in order to preserve the integrity of the Assembly and to safeguard the independence of its members in exercising their European office.

69.2. Any request addressed to the President by a competent authority of a member state for the waiver of immunity of a representative or substitute as guaranteed under Article 15 of the General

Agreement shall be announced in a plenary sitting or Standing Committee meeting and then referred to the Committee on Rules of Procedure, Immunities and Institutional Affairs.

69.3. The committee shall immediately consider the request. It may issue an opinion on the competence of the requesting authority and on the formal admissibility of this request. The committee shall not make any examination of the merits of the case in question. In particular, the committee shall not, under any circumstances, pronounce on the guilt or otherwise of the member, or on whether or not the opinions or acts attributed to him or her justify prosecution. At the earliest opportunity, it shall hear the member concerned by the request, or another member of the Assembly representing the former, who may submit any document which he or she deems relevant. It may ask the competent national authorities to provide it with any information and details it considers necessary to determine whether or not immunity should be waived. The report of the committee shall conclude with a draft resolution for the retention or the waiver of immunity. No amendment to that decision will be admissible.

69.4. The report shall be the first item of business of the Assembly on the first sitting day after the report has been tabled. The debate on the report shall be confined to arguments for or against the waiver of immunity. In the event of the request to waive immunity relating to more than one accusation, each of these may be the subject of a separate decision.

69.5. The President shall immediately communicate the decision of the Assembly to the authority which submitted the request.

69.6. In the event of a member of the Assembly being arrested or deprived of freedom of movement in supposed violation of their privileges and immunities, the President of the Assembly may take the initiative of confirming the privileges and immunities of the member concerned, where applicable following consultation of the competent Assembly bodies. A member may petition the President to defend his or her immunity and privileges. At the request of the President, the Bureau may, subject to ratification by the Assembly, refer the case to the relevant committee.

69.7.a. When dealing with requests for the waiver of the Council of Europe immunity, or with requests to defend that immunity of an Assembly member, the competent Assembly organs shall interpret Article 15.a of the General Agreement on Privileges and Immunities of the Council of Europe as follows. Assembly representatives or substitutes are immune from prosecution and arrest in the exercise of their functions as Assembly members or when travelling on Assembly business, whether this is inside or outside of their national territory. If they are not active within this meaning or not travelling on Assembly business, the national regime shall apply within their country.

69.7.b. The terms "in the exercise of their functions" include all official duties discharged by Assembly representatives and substitutes in the member states on the basis of a decision by a competent Assembly body and with the consent of the appropriate national authorities.

69.7.c. In case of doubt, the Bureau of the Assembly shall decide if Assembly members' activities took place in the exercise of their functions."

838. Parliamentary immunity has been subject to interpretation in Resolution 1325 (2 April 2003)⁴²² and Report no. 9718 on "Immunities of Members of the Parliamentary Assembly" (25 March 2003)⁴²³ and Resolution 1490 (17 March 2006) and Report no. 10840 on "Interpretation of

⁴²² Recalled by Recommendation 1602 (2003) of 2 April 2003 (available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17101&lang=en>, last accessed on 15 February 2018).

⁴²³ Available at <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=17103&lang=en> (last accessed on 15 February 2018).

Article 15.a of the General Agreement on Privileges and Immunities of the Council of Europe” (20 February 2006).⁴²⁴

839. The relevant part of Resolution 1325 (2003) reads as follows:

“5. As regards non-accountability/non-liability (parliamentary privilege), provided for in Article 14 of the General Agreement on Privileges and Immunities of the Council of Europe, the Assembly believes that such immunity should include the opinions expressed by the Assembly’s Representatives and Substitutes when carrying out official functions in member states with the approval of the competent national authorities ...

8. Concerning parliamentary inviolability, guaranteed by Article 15 of the general agreement, the Assembly emphasises that the procedure for waiving parliamentary immunity at the Parliamentary Assembly is separate from that of national parliaments. A national authority lodging a request to waive the immunity of a Parliamentary Assembly member in respect of their own national parliament must also therefore lodge a request with the Assembly ...”

840. The relevant part of Resolution 1490 (2006) provides:

“3. One feature of the Council of Europe’s institutional system is that the immunities of Assembly members are valid during the entire parliamentary year of the Assembly. It has always interpreted the terms ‘during the sessions’ in Article 15 of the General Agreement and ‘during a session’ in Article 25.b of the Statute as covering the parliamentary year.

...

8. [The Assembly] resolves to interpret Article 15.a as follows: regardless of the national regime of immunity, Assembly Representatives or Substitutes shall be protected against prosecution and arrest in the exercise of their functions as Assembly members or when travelling on Assembly business, whether this is inside or outside of their national territory. If they are not active within this meaning or not travelling on Assembly business, the national regime shall apply within their country.”

841. A further report on “Parliamentary immunity: challenges to the scope of the privileges and immunities enjoyed by members of the Parliamentary Assembly” (Doc. 14076) was adopted on 6 June 2016. According to the report, only two cases have been examined by the Parliamentary Assembly under the Rules of Procedure (waiver of immunity).

(b) Committee of Ministers

842. In November 1996 the Committee of Ministers adopted the “Programme of Action against Corruption” (doc. GMC (96)95), in which different issues related to the corruption of elected representatives were identified and described. In the field of criminalisation of corruption by international elected representatives, the lifting of immunities and the special status of MPs was underlined. This specifically concerned PACE MPs, given that they were at the same time MPs in their own country. Furthermore, the adoption of codes of conduct was stressed as a matter of crucial importance in the fight against corruption. In the context of elected representatives, special attention needed to be placed on immunity, relations with their political parties, sanctions and the conflict of interest. Registers of interest and the publication of property of elected representatives were also underlined as measures in the fight against corruption which needed further consideration, having regard to the necessity of securing public confidence in the work of MPs and the protection of privacy. In the sphere of lobbying, it was stressed that it was not always possible to distinguish between exertion of influence (as a legal activity) and trading in influence (as a generally

⁴²⁴ Available at <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=17415&lang=EN> (last accessed on 15 February 2018).

illegal activity). Emphasis was placed on the development of rules on lobbying in cooperation with the institutions involved and lobby organisations.

843. On 6 November 1997 the Committee of Ministers adopted Resolution (97) 24 on “the twenty guiding principles for the fight against corruption”,⁴²⁵ the relevant part of which reads as follows:

“1. to take effective measures for the prevention of corruption and, in this connection, to raise public awareness and promoting ethical behaviour;

...

6. to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society;

...

13. to ensure that the system of public liability or accountability takes account of the consequences of corrupt behaviour of public officials;

...

15. to encourage the adoption, by elected representatives, of codes of conduct and promote rules for the financing of political parties and election campaigns which deter corruption; ...”

844. The Committee of Ministers also adopted Recommendation Rec(2003)4 on “common rules against corruption in the funding of political parties and electoral campaigns” of 8 April 2003,⁴²⁶ aiming at the establishment of a set of standards in order to prevent and fight corruption in the area of funding of political parties and electoral campaigns.

845. On 30 April 2014 the Committee of Ministers adopted Recommendation CM/Rec(2014)7 on the “protection of whistleblowers”⁴²⁷ in which it recommended that member States have in place a normative, institutional and judicial framework to protect any individual who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector. In an appendix to the Recommendation, the Committee of Ministers elaborated on a number of principles to guide the member States in drawing up a framework on the protection of whistleblowers.⁴²⁸

846. On 22 March 2017 the Committee of Ministers adopted Recommendation CM/Rec(2017)2 on the “legal regulation of lobbying activities in the context of public decision making”,⁴²⁹ the relevant part of which provides as follows:

“Definitions

For the purposes of this recommendation and its principles:

a) “lobbying” means promoting specific interests by communication with a public official as part of a structured and organised action aimed at influencing public decision making;

...

A. Objective of legal regulation

1. Legal regulation of lobbying should promote the transparency of lobbying activities.

⁴²⁵ Available at <https://rm.coe.int/16806cc17c> (last accessed on 15 February 2018).

⁴²⁶ Available at <https://rm.coe.int/16806cc1f1> (last accessed on 15 February 2018).

⁴²⁷ Available at [https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Rec\(2014\)7](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Rec(2014)7) (last accessed on 15 February 2018).

⁴²⁸ See further, “The Protection of Whistleblowers: A study on the feasibility of a legal instrument on the protection of employees who make disclosures in the public interest” (Council of Europe, CDCJ(2012)9FIN, 2012). Available at <https://rm.coe.int/1680700282> (last accessed on 15 February 2018).

⁴²⁹ Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680700a40 (last accessed on 15 February 2018).

B. Activities subject to legal regulation

2. Lobbying activities in at least the following categories should be subject to legal regulation:

- a. consultant lobbyists acting on behalf of a third party;

...

C. Freedom of expression, political activities and participation in public life

4. Legal regulation of lobbying activities should not, in any form or manner whatsoever, infringe the democratic right of individuals to:

- a. express their opinions and petition public officials, bodies and institutions, whether individually or collectively;
- b. campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively.

D. Transparency

5. Information on lobbying activities in the context of public decision-making processes should be disclosed.

6. The rules on disclosure should be proportionate to the importance of the subject matter of the public decision-making process and should reflect constitutional guarantees.

E. Public registers of lobbyists

7. A register of lobbyists should be maintained by public authorities or other designated bodies.

...

F. Standards of ethical behaviour for lobbyists

14. Lobbyists should be guided by the principles of openness, transparency, honesty and integrity. In particular, they should be expected to:

- a. provide accurate and correct information on their lobbying assignment to the public official concerned;
- b. act honestly and in good faith in relation to the lobbying assignment and in all contact with public officials;
- c. refrain from undue and improper influence over public officials and the public decision-making process;
- d. avoid conflicts of interest.

G. Sanctions

15. Legal regulations on lobbying should contain sanctions for non-compliance. These sanctions should be effective, proportionate and dissuasive.

H. Public sector integrity

16. Appropriate measures tailored to national circumstances should be in place in order to avoid risks to public sector integrity that might be created by lobbying activities.

17. The measures referred to in the preceding paragraph could include:

- a. a “cooling-off” period, namely a period of time that has to elapse before either a public official may become a lobbyist after leaving public employment or office, or a lobbyist may become a public official after ceasing lobbying activities;
- b. guidance to public officials on their relations with lobbyists, in particular concerning:
 - refusing or disclosing the receipt of gifts and hospitality offered by a lobbyist;
 - how to respond to communications from lobbyists;
 - reporting violations of the regulations or rules of conduct on lobbying activities;
 - disclosing conflicts of interest;

- preserving the confidentiality of data.

I. Oversight, advice and awareness

18. Oversight of the regulations on lobbying activities should be entrusted to designated public authorities.

...”

3. European Union

847. The Rules of Procedure of the European Parliament, 8th parliamentary term – January 2017 (2014 – 2019),⁴³⁰ regulate, *inter alia*, the issues related to parliamentary immunity and the codes of conduct of Members of the European Parliament.

848. Rule 12 of the Rules of Procedure authorises the European Anti-Fraud Office (OLAF) to conduct internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities’ interests within the European Parliament.⁴³¹

849. The Code of Conduct for Members of the European Parliament with respect to Financial Interests and Conflicts of Interest is provided in Appendix I to the Rules of Procedure. The relevant parts of the code of conduct read as follows:

“Article 1

Guiding principles

In exercising their duties, Members of the European Parliament:

- (a) are guided by and observe the following general principles of conduct: disinterest, integrity, openness, diligence, honesty, accountability and respect for Parliament’s reputation,
- (b) act solely in the public interest and refrain from obtaining or seeking to obtain any direct or indirect financial benefit or other reward.

Article 2

Main duties of Members

In exercising their duties, Members of the European Parliament shall:

- (a) not enter into any agreement to act or vote in the interest of any other legal or natural person that would compromise their voting freedom, ...
- (b) not solicit, accept or receive any direct or indirect benefit or other reward, whether in cash or in kind, in exchange for specific behaviour in the scope of the Member’s parliamentary work, and shall consciously seek to avoid any situation which might imply bribery, corruption, or undue influence,
- (c) not engage in paid professional lobbying directly linked to the Union decision-making process.

Article 3

Conflicts of interest

1. A conflict of interest exists where a Member of the European Parliament has a personal interest that could improperly influence the performance of his or her duties as a Member. A conflict of interest

⁴³⁰ Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20170116+TOC+DOC+XML+V0//EN&language=EN> (last accessed on 15 February 2018).

⁴³¹ See further, Decision on the amendments to the Rules of Procedure following the Interinstitutional Agreement of 25 May 1999 on the internal investigations conducted by the European Anti-Fraud Office (OLAF), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-1999-0086+0+DOC+XML+V0//EN#BKMD-3> (last accessed on 15 February 2018), and judgment of the CJEU, *Rothley and Others v. Parliament*, Case C-167/02 P, 30 March 2004 (available at <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-167/02>, last accessed on 15 February 2018).

does not exist where a Member benefits only as a member of the general public or of a broad class of persons.

2. Any Member who finds that he or she has a conflict of interest shall immediately take the necessary steps to address it, in accordance with the principles and provisions of this Code of Conduct.

...

3. Without prejudice to paragraph 2, Members shall disclose, before speaking or voting in plenary or in one of Parliament's bodies, or if proposed as a rapporteur, any actual or potential conflict of interest in relation to the matter under consideration, where such conflict is not evident from the information declared pursuant to Article 4. Such disclosure shall be made in writing or orally to the chair during the parliamentary proceedings in question.

Article 4

Declaration by Members

1. For reasons of transparency, Members of the European Parliament shall be personally responsible for submitting a declaration of financial interests to the President ... They shall notify the President of any changes that have an influence on their declaration by the end of the month following each change occurring.

...

3. The information provided to the President in accordance with this Article shall be published on Parliament's website in an easily accessible manner.

4. Members may not be elected as office-holders of Parliament or of one of its bodies, be appointed as a rapporteur or participate in an official delegation or interinstitutional negotiations, if they have not submitted their declaration of financial interests.

5. If the President receives information, which leads him or her to believe that the declaration of financial interests of a Member is substantially incorrect or out of date, the President may consult the advisory committee ... The Bureau may adopt a decision applying paragraph 4 to Members who do not comply with the President's correction request.

6. Rapporteurs may voluntarily list in the explanatory statement to their report outside interests who have been consulted on matters pertaining to the subject of the report.

Article 5

Gifts or similar benefits

1. Members of the European Parliament shall refrain from accepting, in the performance of their duties, any gifts or similar benefits, other than those with an approximate value of less than EUR 150 given in accordance with courtesy usage or those given to them in accordance with courtesy usage when they are representing Parliament in an official capacity.

2. Any gifts presented to Members in accordance with paragraph 1 when they are representing Parliament in an official capacity shall be handed over to the President and dealt with in accordance with implementing measures to be laid down by the Bureau pursuant to Article 9.

3. The provisions of paragraphs 1 and 2 shall not apply to the reimbursement of travel, accommodation and subsistence expenses of Members, or to the direct payment of such expenses by third parties, when Members attend, pursuant to an invitation and in the performance of their duties, at any events organised by third parties.

...

Article 6

Activities of former Members

Former Members of the European Parliament who engage in professional lobbying or representational activities directly linked to the European Union decision-making process should inform the European Parliament thereof and may not, throughout the period in which they engage in those

activities, benefit from the facilities granted to former Members under the rules laid down by the Bureau to that effect.

...

Article 8

Procedure in the event of possible breaches of the Code of Conduct

1. Where there is reason to think that a Member of the European Parliament may have breached this Code of Conduct, the President shall, except in manifestly vexatious cases, refer the matter to the Advisory Committee.

2. The Advisory Committee shall examine the circumstances of the alleged breach, and may hear the Member concerned. Based on its findings, it shall make a recommendation to the President concerning a possible decision.

In case of an alleged breach of the Code of Conduct by a permanent member or by a reserve member of the Advisory Committee, the member or reserve member concerned shall refrain from taking part in the proceedings of the Advisory Committee on that alleged breach.

3. If, taking into account that recommendation, and having invited the Member concerned to submit written observations, the President concludes that the Member concerned has breached the Code of Conduct, he or she shall adopt a reasoned decision laying down a penalty. The President shall notify that Member of the reasoned decision.

The penalty may consist of one or more of the measures listed in Rule 166(3) to (5) of the Rules of Procedure.^[432]

4. The internal appeal procedures defined in Rule 167 of the Rules of Procedure shall be available to the Member concerned.”

850. With regard to parliamentary immunity, Chapter III of Protocol No. 7 on the privileges and immunities of the European Union (C 326/1, 26.10.2012)⁴³³ provides as follows:

Article 7

(ex Article 8)

“No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament. Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

(a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;

(b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.”

Article 8

(ex Article 9)

⁴³² The following measures are envisaged under Rule 166(3) to (5) of the Rules of Procedure: (1) a reprimand; (2) forfeiture of entitlement to the daily subsistence allowance for a period of between two and thirty days; (3) without prejudice to the right to vote in plenary, and subject, in this instance, to strict compliance with the Members' standards of conduct, temporary suspension from participation in all or some of the activities of Parliament for a period of between two and thirty days on which Parliament or any of its bodies, committees or delegations meet; (4) prohibition of the Member from representing the Parliament on an inter-parliamentary delegation, inter-parliamentary conference or any inter-institutional forum, for up to one year; (5) in the case of a breach of confidentiality, a limitation in the rights to access confidential or classified information for up to one year. In addition, the President may submit a proposal to the Conference of Presidents for the suspension or removal of the Member from one or more of the offices held by that Member in Parliament.

⁴³³ Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/PRO/07&from=EN> (last accessed on 15 February 2018).

“Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.”

Article 9

(ex Article 10)

“During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.”

851. On the issue of parliamentary immunity, the relevant Rules of Procedure of the European Parliament⁴³⁴ provide as follows:

“Rule 5

Privileges and immunities

1. Members enjoy the privileges and immunities laid down in the Protocol No 7 on the Privileges and Immunities of the European Union.

2. In exercising its powers on privileges and immunities, Parliament shall act to uphold its integrity as a democratic legislative assembly and to ensure the independence of its Members in the performance of their duties. Parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament as a whole, and of its Members.

...

Rule 6

Waiver of immunity

1. Any request for waiver of immunity shall be evaluated in accordance with Articles 7, 8 and 9 of the Protocol No 7 on the Privileges and Immunities of the European Union and with the principles referred to in Rule 5(2).

...

Rule 7

Defence of privileges and immunity

1. In cases where it is alleged that an infringement of the privileges and immunities of a Member or former Member by the authorities of a Member State has occurred or is about to occur, a request for a Parliament decision as to whether those privileges and immunities have been or are likely to be breached may be made in accordance with Rule 9(1).

...

Rule 8

Urgent action by the President to assert immunity

1. As a matter of urgency, in circumstances where a Member is arrested or has his or her freedom of movement curtailed in apparent breach of his or her privileges and immunities, the President may, after

⁴³⁴ See further, *Handbook on the incompatibilities and immunity of Members of the European Parliament* (Directorate General for Internal Affairs, 2014), available at [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_ET\(2014\)493029](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_ET(2014)493029) (last accessed on 15 February 2018).

consulting the Chair and rapporteur of the committee responsible, take an initiative to assert the privileges and immunities of the Member concerned. The President shall notify the committee of that initiative and inform Parliament.

...

Rule 9

Procedures on immunity

1. Any request addressed to the President by a competent authority of a Member State for the immunity of a Member to be waived, or by a Member or a former Member for privileges and immunities to be defended, shall be announced in Parliament and referred to the committee responsible.

...

4. The committee shall make a proposal for a reasoned decision which recommends the adoption or rejection of the request for the waiver of immunity or for the defence of privileges and immunities. Amendments shall not be admissible. If a proposal is rejected, the contrary decision shall be deemed to have been adopted.

...

8. The committee may offer a reasoned opinion as to the competence of the authority in question and the admissibility of the request, but shall not, under any circumstances, pronounce on the guilt, or otherwise, of the Member, nor shall it pronounce on whether or not the opinions or acts attributed to the Member justify prosecution, even if the committee, in considering the request, acquires detailed knowledge of the facts of the case.

9. The committee's proposal for a decision shall be placed on the agenda of the first sitting following the day on which it was tabled. ...

...

10. The President shall immediately communicate Parliament's decision to the Member concerned and to the competent authority of the Member State concerned, with a request that the President be informed of any developments and judicial rulings in the relevant proceedings. When the President receives this information, he or she shall transmit it to Parliament in the way he or she considers most appropriate, if necessary after consulting the committee responsible."

4. OECD

852. The OECD has adopted a set of legal instruments related to the implementation of its Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 21 November 1997.⁴³⁵ The scope of the Convention, as far as relevant, is defined as follows:

Article 1

The Offence of Bribery of Foreign Public Officials

"1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal

⁴³⁵ Available at <http://www.oecd.org/corruption/oecdantibriberyconvention.htm> (last accessed on 15 February 2018).

offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.

3. The offences set out in paragraphs 1 and 2 above are hereinafter referred to as “bribery of a foreign public official”.

4. For the purpose of this Convention:

a) “foreign public official” means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation; ...”

853. The related OECD legal instruments include:

- Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions of 26 November 2009;
- Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions of 25 May 2009;
- Recommendation of the Council on Bribery and Officially Supported Export Credits of 14 December 2006;
- Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption of 16 November 2016;
- OECD Guidelines for Multinational Enterprises – Section VII.

5. OSCE

854. In 2016 the OSCE published a comprehensive “Handbook on Combating Corruption”, which was prepared by the Office of the Co-ordinator of OSCE Economic and Environmental Activities in collaboration with the OSCE Office for Democratic Institutions and Human Rights (ODIHR), other OSCE executive structures, and partner organisations including the United Nations Office on Drugs and Crime, OECD and GRECO. The Handbook contains various international standards and recipes of a number of key international bodies in the anti-corruption field. Its aim is to raise “awareness of the range of international instruments available to national policymakers and anti-corruption practitioners, and assist them in developing and implementing effective anti-corruption policies and measures, thereby reducing the possibilities for corruption, instability and transnational crime.”⁴³⁶

6. Transparency International

855. In 2015 Transparency International elaborated on the available international standards for lobbying regulation aimed at securing greater transparency, integrity and participation.⁴³⁷ These standards rest on the following guiding principles:

“Lobbying is a legitimate activity and an important part of the democratic process.

There is a significant public interest in ensuring the transparency and integrity of lobbying, as well as diversity of participation and contribution to public decision-making.

Any regulatory measures to secure these ends shall be proportionate, fit for purpose and not impede on the individual rights of assembly, free speech and petition of government.”

⁴³⁶ Available at <http://www.osce.org/secretariat/232761> (last accessed on 15 February 2018).

⁴³⁷ Available at <http://lobbyingtransparency.net/lobbyingtransparency.pdf> (last accessed on 15 February 2018).

856. Transparency International has also conducted several comprehensive studies on lobbying activities and corruption risks in Europe.⁴³⁸

857. Transparency International has produced several research reports on the issues of parliamentary ethics monitoring bodies and parliamentary codes of conduct.

858. On the issue of parliamentary ethics monitoring bodies, Transparency International stressed that parliaments had a key role in the fight against corruption and the duty to uphold to the highest standards of integrity. It also found that many countries had established comprehensive ethics regimes to ensure that MPs performed their functions in an ethical manner. Such regimes consisted of a code of conduct, specific ethic rules detailing the requirement to fulfil the code and a regulatory institution to enforce these rules. The effectiveness of the regime depended on the monitoring and enforcement mechanisms. In practice, Transparency International identified three major approaches to enforcement: self-regulation – the regulatory body is created within the legislature; external regulation – an external body, independent from the legislature, is created; a combination of both – elements of self-regulation are combined with an external, independent regulatory body.⁴³⁹

859. As to parliamentary codes of conduct, Transparency International found that codes of conduct usually aimed at promoting ethical behaviour and preventing unethical behaviour, providing for a set of ethical standards, increasing public trust in and respect for the institution, as well as establishing rights and responsibilities for parliamentarians. It further found that codes for parliamentarians often articulated general principles of ethics and addressed the conflict of interest, gifts and favours, asset declaration, outside activities, nepotism, post-public employment and relations with lobbyists. Available studies had shown that the existence of a code was perceived by parliamentarians as helpful in certain situations, such as in preventing technical infringements, “protecting” them when dealing with constituents and local parties, as well as increasing scrutiny both inside and outside the house. Transparency International stressed that the effectiveness of a code of conduct for parliamentarians depended on a range of factors, including a process of consultation and discussion prior to the enactment of the code, the existence of an active civil society, free media, a functioning integrity system, an effective protection mechanism for whistle-blowers, and on parliamentarians’ commitment. The simplicity/accessibility of the code and oversight mechanisms also appeared to be important.⁴⁴⁰

⁴³⁸ See *Lobbying in Europe: Hidden Influence, Privileged Access* (Transparency International, 2015), available at https://www.transparency.org/whatwedo/publication/lobbying_in_europe (last accessed on 15 February 2018); *Open Data to Fight Corruption, Case Study: The EU and Lobbying* (Transparency International, 2016), available at https://www.transparency.org/whatwedo/publication/open_data_to_fight_corruption_case_study_the_eu_and_lobbying (last accessed on 15 February 2018), and *Money, Politics, Power: Corruption Risks in Europe* (Transparency International, 2012), available at http://www.transparency-se.org/TI_MoneyPoliticsPower_CorruptionRisksInEurope.pdf (last accessed on 15 February 2018).

⁴³⁹ *Parliamentary Ethics Committees* (Transparency International, 2016), available at https://www.transparency.org/files/content/corruptionqas/Parliamentary_ethics_committees_2016.pdf (last accessed on 15 February 2018).

⁴⁴⁰ *The Effectiveness of Codes of Conduct for Parliamentarians* (Transparency International, 2012), available at https://www.transparency.org/files/content/corruptionqas/The_Effectiveness_of_Codes_of_conduct_for_Parliamentarians.pdf (last accessed on 15 February 2018).