



SITUATION WITH THE RIGHT TO ASSOCIATION IN AZERBAIJAN

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Freedom to unite and its effective implementation by citizens play a role of critical element for the democracy based on political process and interaction. People get together to establish different public associations and groups of interest and influence. They are involved in developing and implementing policy and programs that impact their lives. They provide a feedback on common interests to the public and contribute to raising the public awareness and attaining positive social, economic and political changes. In this regard, NGOs act as a leading part of civil society to promote the rights of citizens to unite by creating opportunities for citizens to be involved in public and national governance without any political power.

A number of international documents provide guidelines and hold the nations responsible to support NGO development and public engagement. At the same time, the governments possess the mechanisms that adjust establishing NGOs, their state registration, efforts, management, and accountability that are used as a leverage to impact NGOs in a number of cases.

Official reports say that there are 2600 some NGOs registered officially in Azerbaijan. However, the confirmed data indicates there are about 1000 NGOs that are not registered with the state. Both registered and unregistered NGOs face with serious violations, foot dragging, multiple and baseless denials for the registration. One of the main factors that impede initiatives by citizens to establish NGOs in Azerbaijan and protract civil society development is an issue of the registration. Complexities of legislation for NGOs to register with the state, wrong application of laws in a number of cases and irrational mechanisms to protect the rights necessitate reforms in this area.

The right to unite for Azerbaijani citizens is addressed both in the national Constitution and in a number of international documents to which Azerbaijan is signatory to. Under the Article 58 of the Constitution of the Republic of Azerbaijan, each citizen has the right to union with others. Every citizen has the right to establish any union including political parties, trade unions and other forms of public associations or join the association. Associations that seek to oust the legitimate government by force are prohibited. Rules for NGOs and their work are governed by the Law on the state registry and registration of legal persons, Law on NGOs (public associations and foundations) and the

Code of Civil Procedures of the Republic of Azerbaijan. In line with the Law on NGOs, public associations and foundations in Azerbaijan are identified as NGOs.

Denial to do the state registration for public association. Pursuant to Law on the state registration and the state registry of legal entities, the following cases can be used solely for the purpose of denial for the state registration:

- Contradiction between the paperwork and the Constitution of the Republic of Azerbaijan, the Law on the state registration and the state registry of legal entities, and other legislative acts;
- Contradiction between the goals/mission statement/form of work and legislation;
- Violation of legal requirements that protect company names or there is already a registered public association with a similar name;
- Failure to eliminate shortcomings identified by the registration office in the constituent documents within a specific period (20 days).

As for assumptions that establishing an association as a legal entity is not expedient, these claims cannot be accepted with regard to the state registration and the state registry.

Denial for the state registration of public association shall be appealed in an administrative order or via the court.

CONCLUSIONS

Analysis of legislation related to the state registration for legal entities, international practices, official reports, survey and interviews enable to identify the scope of problems with regard to the state registration for NGOs. Legal basis that adjusts the state registration for NGOs and the current registration practices have a negative impact on the NGO registration because of its lack of clarity and restrictions. The steadily declining curve observed in some NGOs registered over the past years is mainly attributable to the hardships of the state registration. The status of NGO registration is not in line with global human calls to launch initiatives by citizens' rights to union and empowering civil society.

Hence, by summarizing information from studies and survey conclusions, one can come to the following recommendations with regard to the issue of the registration for NGOs in Azerbaijan

RECOMMENDATIONS

In accordance with the essence of Article 58 of the Constitution, it is necessary to work out the legislation that determines the legal regulation of right to association. In this article of the Constitution freedom of association is protected to a larger extend and does not make it necessary to have any restricting legal procedures for enjoyment of freedom of association. Having a procedure in the Law that is not provided by the Constitution and furthermore to have a lot of restricting norms in those procedures contradicts essence of freedom protected by the Constitution. By law regulation of freedom of association may be subordinated to certain procedures, however, those procedures must have not restricting norms but norms that will facilitate its realization and regulating norms.

1. Law on NGOs and Foundations must be worked out with a wide public participation (with active participation and consensus of the NGO sector, political parties, media representatives and independent experts), norms of the existing Law that restrict and narrow freedoms and that link their enjoyment to very difficult procedures must be refused and it must be turned into a Law which is targeted only at regulating freedoms.

2. As the Constitution does not have any norm that envisages permission of a relevant state body for enjoyment of freedom of association, procedures for registration for those people who want to enjoy freedom of association and establish an NGO must be simplified, registration must be made on a basis of notification like it exists for the media outlets. Any legal and physical persons or a group of persons must be able to unite without getting an initial permission and after submitting a notification to a relevant state body, in some time (at most 1 week) must be able to start free activity. The relevant state body with exception of cases when a legal person with the same name is registered and cases when one of the restrictions for freedom of association stipulated in the Constitution are chosen as a purpose within 1 week must register that organization and must present a copy of the certificate to the founders. In any case, the organization must start the legal activity in 1 week.

3. Norms on NGO registration as provided in the Law of the State Registration of the Legal Persons and State Registry must be completely renewed, the state registration must be implemented in a simplified form based on notifications. (Like for commercial legal persons).

4. Along with a Law on NGOs and Foundations, Model Statutes for NGOs and Foundations must be approved and in these Statutes a single management form for both the union and foundation must be determined and all the NGOs must adapt their management system to this form. In such a way, the claim on incompliance of the Statutes to the legislation will be eliminated. In addition, by indicating in the Model Statutes legitimate grounds for demanding restriction of NGOs' freedom of association as in accordance with the Constitution and European Convention for Human Rights and Freedoms, frames of the activities of the NGOs must be determined and those frames must be the activity frames determined and accepted for everyone in advance. The Model Statutes must give freedom to choose directions of NGO activities in accordance with the law. So, activity of NGOs in accordance with the law will be provided and gaps in the Statutes will not be put forward without grounds.

5. Termination of the NGO activity can be only by a court decision:

- Reasons for grounds to terminate must be described in the Law clearly, precisely and in detail, must allow for the prohibitions to be clearly seen from the very beginning and must not contain indefinite expressions and norms that give freedom of interpretation of the grounds;

- Purpose and result of the legal reasons for termination must be for protection of one or a number of the legitimate public interests, namely national security, territorial integrity, public order and security, prevention of disturbances and crime, protection of health and morals, other persons' rights and freedoms as enlisted in Articles 3.5 and 3.6 of the Constitutional Law on Regulation of Public Rights and Freedoms of the Republic of Azerbaijan as well as in paragraph 2 of Article 11 of the European Convention for the Protection of Human Rights and Fundamental freedoms;

- Termination must take place when it is directed at protection of the most essential values which are necessary for existence of the democratic society and be applied as the last resort in the democratic society when the other possible and efficient means for the protection of the legitimate public interests that could restrict freedom of association to a lesser degree are exhausted.

- Termination of the NGO activity by stopping freedom of association or application of the other sanctions must be proportional to the freedom of association, namely the benefits from protection of the legitimate public interests must be prevailing over a damage that restriction (by taking into account sanctions to be applied) will have on freedom of association.)

6. Artificial reasons that do not have legitimate legal values and form a basis for terminating the activity of the NGOs must be removed from the Law. Receipt of a written warning by the NGO or punishment in an administrative way must not be a sole basis for NGOs' abolishment. An NGO that made an administrative legal violation is brought to an administrative responsibility and receives a proportionate punishment for the violation. In accordance with each of the violations, a certain sanction is envisaged. In such a case, combining a violation for which earlier a sanction was applied and giving a more severe decision and determining a ground for abolishment of the NGO in a court order is an approach that eliminates freedom of association completely and is far from the essence of legal regulation. (E.g. Provision on termination of the NGO activity in a court order provided by

Article 31.4 of the Law on the Non-Governmental Organizations (public unions and foundations) that states "In case if the non-governmental organization was given more than 2 written warnings during 1 year or was given instructions on elimination of the violations, the non-governmental organization may be abolished by a court decision" is a very non-adequate regulation and has to be removed from the law. Not notifying about change of the address in time leads to the same legal result...)

7. Opportunities for NGO activities must not be restricted without a legitimate ground in the Law. Showing in which activities the NGOs may be engaged also indirectly serves to restrict the freedom. Selection of this method is unacceptable. Paragraph 4 of Article 2 of the current Law lists the activities in which NGOs may be engaged; "In accordance with the election legislation of the Republic of Azerbaijan the non-governmental organizations may monitor the Presidential Election, Parliamentary

Elections and Municipal Elections conducted in the Republic of Azerbaijan and conduct exit-polls". From the description of this Article it is seen that that non-governmental organizations may neither monitor the Referendum nor conduct exit-polls during the Referendums that are conducted for realization of very important changes to the Constitution in Azerbaijan as it is only elections enlisted in the article, not the referendum.). As all the other activities are not shown in the law, enlisting what the NGOs can do in the law is unacceptable and that by essence is not logical and contradicts the dominating legal norms that regulate human rights and freedoms.

8. Having norms on names of the NGOs in the law, which state that selecting certain names may be unacceptable, having a requirement to have a name matching purpose are the

reasons that restrict freedom and do not fit any of the legitimate grounds. It is unacceptable to have such restrictions in the law (E.g. The first sentence of Article 3.1. of the Law about Non-Governmental Organizations (Public Unions and Foundations) of the Republic of Azerbaijan “The non-governmental organization must have a name that shows its organizational and legal form and nature of the activity”, an imperative provision, by another change made to Article 3.1 “In the name of the non-governmental organization names of the state bodies of the Republic of Azerbaijan as well as names of the outstanding people (without consent of their relatives or heirs) may not be used” provision are provisions of the same kind, which do not serve a legitimate legal purpose.)

9. Normative legal acts directly or cohesively regulating NGO activities must be reviewed, their provisions hindering NGO activity must be removed and must be turned into regulating ones;

- Norms in the “Rules on Registration of the contracts (decisions) on receipt (giving) grants” approved by a decree # 27 of the President of the Republic of Azerbaijan dated 12 February 2004 require procedures that exceed the purpose. These norms should either be completely removed or should be replaced with the notification system; (The clear example is a requirement to repeatedly certify a contract approved by a grantor and a grantee legal person by a notary);

- if transferred to the notification system, an NGO must be able to present for information a copy of the contract about a receipt of the grant together with a letter certified by an official stamp, certification by a notary must not be needed, the term of this notification should not be 1 month but must cover the period during which the Grant is in effect;

- Foundations as a form of the NGOs must be removed from among the subjects to the mandatory audit; Although an amendment dated 14 June 2011 in a decision # 155 of the Cabinet of Ministers of the Republic of Azerbaijan about approval of the stage-by-stage application of the terms of the Law of the Republic of Azerbaijan on “Internal Audit” on economy subjects of the mandatory audit removed the Non-Governmental Organizations from the list, paragraph 9 of the list still has “Foundations”.

10. Hindering procedures required for registration of the representations and branches of the foreign legal persons in the legislation must be simplified, their equal rights with the Azerbaijani NGOs must be ensured. For registration of the branches and representations of the foreign legal persons in addition to the procedures required for local NGOs, it must suffice to present a certified copy of the document confirming activity from a legal aspect in its country and a decision of the organization on opening a representation or branch. (E.g. the provisions of Article 7.5 of the Law about Non-Governmental Organizations (public unions and foundations) of the Republic of Azerbaijan “Deputies of the heads of the branches or representations of the non-governmental organizations whose founders are foreigners or foreign legal persons”, Article 12.3 of the Law “State registration of the branches and representations of the non-governmental organizations of the foreign states in the Republic of Azerbaijan may be implemented on a basis of the agreement signed with those organizations”, complicate registration of the branches and representations of the foreign non-governmental organizations and are subject to norms that are different from

those that should be applied to everyone by law. And request for the agreement is also unclear. One of the parties is a state, the other one is an NGO.

11. Decision # 43 of the Cabinet of Ministers of the Republic of Azerbaijan dated 16 March 2011 about approval of "The rules for conduct of negotiations for preparation and signature of the agreement related to the state registration of the branches or representations of the non-governmental organizations of the foreign states in the Republic of Azerbaijan" must be annulled, interference by the state at this stage must be eliminated.

12. It is unacceptable to restrict activities of the foreign NGOs and representations that function in Azerbaijan. The legislation should not allow such discrimination. (For example, a provision envisaged in paragraph 2.4 of the Law on Non-governmental organizations (public unions and foundations) "Foreign legal persons may participate in activities related to conduct of exit-poll during the Presidential Elections of the Republic of Azerbaijan, elections to Milli Mejlis of the Republic of Azerbaijan and municipal elections only jointly with the non-governmental organizations of the Republic of Azerbaijan" is not based on any legitimate ground).

13. As a non-governmental organization is not a commercial legal person requesting from it an annual financial report and issuance of an official warning for not giving this report within 30 days and the NGO annulment in case of 2 of such warnings don't serve a legitimate legal purpose. This requirement must be removed from the law. (Decision # 201 of 25 December 2009 of the Cabinet of Ministers of the Republic of Azerbaijan on approval of "The Rule for form, content and presentation of the annual financial report of the non-governmental organization must lose its effect. Separately, 144-pages long document "National Accounting Standards for Non-Governmental Organizations" approved by the order # I-05 dated 13 January 2009 of the Ministry of Finance of the Republic of Azerbaijan must be simplified and turned into a collection of norms that can be applied by everyone).

14. Actions that restrict freedoms of NGOs create artificial obstacles for its legal activity; ungrounded refusal of registration, bureaucratic red tape regardless of who did those must lead to administrative and criminal responsibility. (Respectively new provisions must be added to the Code of the Administrative Offences and Criminal Code, official persons and institutions must bear administrative responsibility for hindering activities of the NGOs, illegal restrictions of its rights, and criminal responsibility if such actions took place deliberately or by application of violence, with a purpose of cupidity).

15. Behaviors during the registration of NGOs that are not envisaged by the law but which are widely applied in practice (given below) must be completely eliminated; those responsible must bear administrative responsibility;

16. During the NGO registration and preparation of the reports development of the Information Communication Technologies must be taken into account, in accordance with approval of the electronic signature, new norms, rules regulating presentation of the documents, including financial, social insurance, statistical reports must be adopted, procedures must be simplified.

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