

Report on the Registration Procedure of Non-Governmental Organisations

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*Funded by the OSCE Office in Baku within the Framework
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Office in Baku

REPORT

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By Anar Kazimov & Hafiz Hasanov, legal experts

I. INTRODUCTION:

The OSCE Office in Baku requested us to review the registration process of non-governmental organisations. The purpose of the monitoring was to study the changes in the NGO registration process since the adoption of the new “Law on State Registration and State Register of Legal Entities,” dated 12 December 2003.

The monitoring was conducted in the following manner: The project was announced in the media of the country. Therein NGOs that had applied unsuccessfully to the Ministry of Justice for registration were requested to submit their application documents and response letters of the Ministry to the OSCE Office in Baku. The examination of the submitted documents was carried out by two local legal authors.

The implementation of the project commenced on 15 June 2004 and was completed on 15 December 2004. During that time documents of altogether 22 non-governmental organisations were examined within the project framework. The examined NGOs are as follows:

1. “Committee of Lawyers on Human Rights”
2. “Centre for Democratic Reforms”
3. “Cultural Centre of Khynalyg”
4. “Independent Union of Transporters”
5. “Our City” Sumgayit Public Association for Social Development

6. "For the Sake of Free Society"
7. "Union of Retired and Reserve Officers"
8. "Centre of Democratic Education"
9. "Study and Development of Central and Asian Countries" International Humanitarian Organisation Representative Office
10. "Democratic Development" Regional Public Association
11. "Freedom of Speech" Public Association on Protection of Human Rights
12. "Economic Journalists"
13. "Trust and Care" Charity Society
14. "Facilitation to Ensuring of Constitutional Rights of Citizens"
15. "Finance" Transparent Budget Public association
16. "Care"
17. "Legal Assistance"
18. "Institute of Media Rights"
19. "Protection of Territorial Socio-Economic Rights of Tenants"
20. "Social and Economic Development of the Eastern Region"
21. "Centre of Strategic Investigations"
22. "Movement for Azerbaijan"

II. BRIEF SUMMARY

The documents submitted by the above-mentioned non-governmental organisations to the Department of State Registration of Legal Entities under the Ministry of Justice were drafted in general compliance with the requirements of the Law. The documents for the incorporation of these organisations also were submitted within the timelines set forth in the Law, i.e., within a month of the constituent assembly. The application letters provided by the founders and documents attached thereto were generally compliant with the legal requirements.

The review of the responses given by the registration body leads to the conclusion that all its answers are the same in essence. It becomes clear from the responses that repeatedly the same occurrences appeared. A document submitted for registration is studied within the first 30 days as specified in the law and then the period is extended for another 30 days without providing any reasoning whereas the law stipulates that the time for processing the submissions can only be extended “in exceptional cases when additional investigation is needed” (Article 8.2). By indicating one or several minor shortcomings, the organisation is refused registration. It is the opinion of the authors of this report that the discovery of the shortcomings would also have been possible within the first stage of the application process (the first 30 day).

In the next stage the mentioned shortcomings are corrected by the founders and the documents resubmitted to the registration body. During the following process the same procedural pattern again repeats in the above-mentioned manner, and continues for months. A conclusion can be made that responses given by the registration body are actually an evasion of the NGO registration under various excuses. As a result, the registration of non-governmental organisations remains a problem. This situation was the same in almost all of the examined cases.

At the same time, some shortcomings listed by the registration body with regard to the application documents of a number of NGOs have certain validity. This could be found in the cases of the “Independent Union of Transporters”, “For the Sake of a Free Society”, “Study and Development of Central and Asian Countries” International Humanitarian Organisation Representative Office, “Trust and Care” Charity Society, “Centre for Strategic Investigations” and “Protection of Territorial Socio-Economic Rights of Tenants”. However, also these shortcomings in the submissions of the applicants could possibly have been corrected during the registration process and should not have been considered as grounds for final rejection of registration of these organisations (Article 8.2) since they are not considered by the law as grounds for rejection (Article 8.3).

III. GENERAL EVALUATION

Generally, the examination results allow the conclusion that after the adoption of the new Law on State Registration and State Register of Legal Entities no serious changes were made for the registration of non-governmental organisations. Therefore, even after the new Law was adopted, the existing registration problems of non-governmental organisations remained unresolved. The problems can be classified as follows:

- problems related to the implementation of law, bureaucracy of officials, etc;
- problems resulting from the existing legal framework.

We think that the registration of NGOs should be carried out not only by the central registration office but also by regional departments of the State Register of Legal Entities. For instance, the association “Social and Economic Development of the Eastern Region” as well as “Assistance to Ensure the Constitutional Rights of Citizens”, “Legal Assistance”, “Finance” and other associations from various regions of Azerbaijan were obliged to apply to the central registration office of the Ministry of Justice that is located in Baku.

In addition, when the registration body accepts documents, it should necessarily carry out a preliminary review. A lack of any of the documents or existing obstacles should be revealed and reported to the applicant. Furthermore, the registration procedure should significantly be simplified and the range of documents necessary for submission limited.

The problems in implementing the law and the bureaucracy caused by the civil servants reveal the failure to implement the regulatory norms of the registration

procedures in an unambiguous manner that corresponds to the nature of the law (occasional misinterpretation of legal provisions, extension of periods without any legal grounds, subjective views, the hampering of the registration process through its centralisation, etc.).

Problems discovered during the monitoring can be classified as follows:

1. Rejection of registration on irrelevant grounds;
2. Failure of the Ministry of Justice to keep to the timelines of the registration process;
3. Prolongation of periods for consideration of documents for up to 30 days without showing of any grounds;
4. Centralized registration of NGOs by the central registration body of the Ministry of Justice located in Baku.

Problems resulting from the existing legal framework are related to the fact that a number of provisions of the regulatory acts and particularly those of the Law on State Registration and State Register of Legal Entities are not exact and concrete enough. We think that a number of improvements should be made to the Law in order to solve the problems.

IV. RECOMMENDATIONS:

The authors recommend the following:

1. NGO registrations should be carried out not only by the central registration office but also by regional departments of the State Register of Legal Entities.

2. The registration procedure should be significantly simplified and the amount of documents required for submission limited.
3. A preliminary review by the registration body should be carried out to provide an opportunity for the applicant to submit missing documents and correct obvious shortcomings in the submissions.
4. The following amendments to the Law on State Registration and State Register of Legal Entities are necessary:
 - a. The law should clearly and correctly specify in which cases it should be possible to rectify the shortcomings, and which are the reasons for the rejection of a registration. Shortcomings which can be rectified during the registration procedure and grounds for rejection should be provided separately in the law. Such an amendment would not allow the registration body to consider a shortcoming which could be corrected as a ground for rejection.
 - b. Deadlines set for the registration process should be considerably shortened. If the initial period for the examination of documents is specified as 30 days, then an extension of the period by 15 days rather than 30 days should be considered more reasonable. This suggestion would prevent formal answers and unnecessary prolongations of consideration periods. Furthermore, it would be reasonable to set shorter deadlines for the correction of shortcomings. i.e., rather 10 days than 20, since 10 days will be sufficient to correct an inaccuracy. In addition, there is no serious rationale to ignore non-working days in the Law when calculating timelines of registration. (In other laws non-working days are not counted. That this is not done in this Law results in a bureaucratic

extension of time which is incompatible with the principle of consistency.)

- c. This Law does not specify the exceptional cases which may reason a prolongation of the consideration period. This deficiency in the law allows the registration body to extend the consideration period each time. From this view we consider that the Law should clearly specify what the exceptional cases are.

5. The Ministry of Justice should prepare a handout that describes in easy language the requirements for NGO registration.

V. ASSESSMENT OF THE ORGANISATIONS EXAMINED

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(Not included in the English version of the report.)