

30 September 2013



## CENTER FOR LEGAL INITIATIVES

Jafarov gardashlari street 19/18, AZ1001, Baku,  
Azerbaijan, Phone/Fax: +994124925775

[www.legal.org.az](http://www.legal.org.az), [www.associationline.az](http://www.associationline.az)

[ziya.guliyev@gmail.com](mailto:ziya.guliyev@gmail.com),

---

### **Organisation Security and Co-operation in Europe (OSCE) The Human Dimension Implementation Meeting 2013, Warsaw, Poland**

*Working session 8: Freedom of assembly and association, 27 September 2013*

### **FRREDOM OF ASSOCIATION IN AZERBAIJAN: *Gaps Analysis of the legislative and practical issues related to NGOs, operating in Azerbaijan***

## INTRODUCTION

This document has been prepared by lawyer of the “*Center for Legal Initiatives*” *Public Union*<sup>1</sup> within the framework of the project “*Strengthening civil society*” with the financial support of the **Great Britain Embassy in Azerbaijan**.

The document has been prepared by using the following methodologies:

- Analysis of the legislation;
- Consultation and interviews with NGO leaders and representatives;
- The analysis of the court and government decisions;
- Comparative analysis of the researches, report and analysis in this field.

There is an objective to evaluate NGO legislation frameworks in Azerbaijan with the methodology used in gaps analysis. The analysis was mostly based on the legislative acts in force, government and judiciary decisions, official information and reports, research findings and articles which haven't been denied in the Media, as well as researches and information on court cases of the Legal Initiatives Public Union in this field.

Legal framework	Status	Commentary
<b>Law:</b> 1. Law on non-profit organizations (Public Unions and Funds); 2. Law on State Registration of Legal Entities; 3. Grant Law; 4. Code of Administrative Offences; 5. Presidential Decree on the Ministry of Justice	1. 13 June 2000, № 894-IQ; <b>Effective.</b> 2. 12 December 2003, (№560-IIQ); <b>Effective.</b> 3. 17 April 1998, (№ 483-IQ); <b>Effective.</b> 4. 11 July 2000, (906-IQ) <b>Effective.</b>	- There are quite lot problematic and controversial legal provisions in the legislation. - Restrictions on activities; - Registration is a complicated, difficult and expensive process; - Registration is only possible in Baku; - Access to financial resources is limited and complicated; - The wide discretion of the official body on monitoring/control; - Strict responsibility, as well as high fines and the wide discretion of the state body to cancel NGO registration in court.
<b>Rules:</b> 1. Rules of the Collegium of the Ministry of Justice on “State Registration of Non-Profit organizations and educational institutions”; 2. The decision of the Board of the Ministry of Justice on “Contract registration on grants”; 3. National Accounting Standards for non governmental organizations.	1. 19.03.2012, (2-N) <b>Effective.</b> 2. 12 February 2004, (№ 27) <b>Effective;</b> 3. Order #I-05 dated in January 13, 2009, <b>Effective</b>	1. Administrative burden; lack of efficient remedies; existence of problematic legal theses empowering the registration body for refusal and process delay; 2. Difficult procedures on grant receive and registration;
NGO policy:		3. In recent year, the government made the

<sup>1</sup> *Center for Legal Initiatives (CLI) is an independent non-governmental organization that aimed to strengthen rule of law, promote good governance and enhance public participation in decision-making and policy-making processes.*

1. Limited legislation and policy actions; 2. Forming of the negative social image	1. Constantly; 2. Constantly for the targeted organizations;	mechanisms difficult to collect donations and financing for NGOs. 4. High level officials tries to maximum use the Media which is on the control of the forming of negative image of NGOS speaking about critical and problems.
---	---	--

Legal and policy frameworks regulating civil society sector in Azerbaijan became more complex recently and unsuitable environment has been created for NGO activities. Law changes and limitations implemented in the current year became a serious conflict and discussion topic. There is a complicated registration system in the country where NGO registration is impossible. Responsibility actions for NGO activity have been observed with fantastic penalties. Monitoring and control mechanisms of the state bodies create serious threats over NGOs. NGO activity is oppressed in the regions.

NGOs find out gaps in the existing policies and they organize public discussions in this field. At the result of it, NGOs are oppressed by the government and they are deprived of the dicussion and dialogue right with the government.

### **Barriers to entry (formation and registration).**

Although there are some problematic and contradictory provisions in the rules of the forming of NGOs, but currently the most problematic issue is NGO registration in Azerbaijan. Rules regulating registration process gives wide discretion to the Ministry of Justice in order to cancel the registration and extend the process. Such intended barriers for registration caused formation of a lot of NGOs operating unregistered.

Although local and international<sup>2</sup> organizations prepare some evaluation reports and recommendations on registration and present it to the government, but registration process still cant find its solution.<sup>3</sup>

### **Barriers to activities.**

Non-adequate fines are intended in the violation cases of the rules regulating NGO activities.

Non governmental organizations cannot participate in the elections of Azerbaijan Republic President, Milli Majlis and municipalities. They also cannot financially support political parties. According to the election legislation of Azerbaijan Republic, non governmental organizations can observe presidential, parliamentary and municipality elections.<sup>4</sup>Besides, NGOs have to address President Administration with the application about their events in regions.

### **Obstacles on access to resources.**

Azerbaijan NGOs that have limited financial resources dont have legal and financial frames promoting efficient access to financial resources. The main financial resources of NGOs include membership fees, salaries and voluntary donations, incomes from the sales of goods, stocks, bonds, and dividends received from other securities and deposit, grants etc. However NGOs refrain to use all of these resources because they are always under the control of the Ministry of Justice. As a result, the main financial sources of Azerbaijan NGOs are project-grants. Another important problem limiting financial opportunities of NGOs arives from the limited opportunities

<sup>2</sup> <http://www.osce.org/baku/42386>

<sup>3</sup> [http://www.icnl.org/programs/eurasia/7-20\\_AzerAssess\\_Eng.pdf](http://www.icnl.org/programs/eurasia/7-20_AzerAssess_Eng.pdf)

<sup>4</sup> Law on non-governmental organizations (public unions and funds), Article 2.4

of NGO professionalism. And it has negative influence for them to get income from their services and to receive donation and membership fees.

Current year's changes and amendments to the law defined that NGOs cannot receive their donations by cash except those whose objective is charity.

## **The main concerns**

### **The main concerns of NGOs regarding to legislative frameworks in Azerbaijan Republic:**

***The legal framework (formation, registration, reporting):*** NGOs cannot easily join election processes.<sup>5</sup> Registration bodies became political; procedures give an authority to registration bodies to easily reject registration applications; the administrative burden of legislation is very hard; registration body is centralized; registration became a very complex and time-consuming process.

### **Reporting obligations:**

***Formation:*** There are several laws regulating NGO formation relations in our country. These are the following: Law on "Non-governmental organizations (public unions and funds)" dated in June 13, 2000; Law on the state registration of juridical persons; "Rules on the registration of non-governmental and educational institutions" approved by the decision N2 of the Board of the Ministry of Justice dated in 19.03.2012.

***Formation of NGOs:*** Non-governmental organizations can be created by Azerbaijan citizens reached to the age of 18, as well as foreigners having the right to live constantly in the territory of Azerbaijan Republic, also by physical persons except state authority and local government institutions. Non-governmental organizations can be created in two forms:

1. *By formation;*

2. *By re-organizing of the existing non-governmental organizations.*

Formation of non-governmental organizations is implemented by the decision of the constitutors. In that case, formation meeting is organized and its regulation is accepted. Re-organizing of non-governmental organizations can be implemented in the forms of joining, being divided, separation and overturn. NGOs are officially formed and registered in public union forms in Azerbaijan. Foreigners and those who don't have citizenship can create public unions only if they have the right of constant living.<sup>6</sup> Also the Ministry of Justice has the right to raise a claim in order to liquidate the NGO at the court.<sup>7</sup>

***Registration:*** NGO registration is under the control of the Central Executive authority in the country. Registration is a long process, rules are complex and expensive. State body has consideration authority in order to liquidate the registration. It is possible to decrease the time intended for registration and also to simplify the registration process. At the same time, it is possible to implement the registration not only in Baku, but also with the departments of the

---

<sup>5</sup> On 25 September, 2013, Central Election Commission refused national NGOs to monitor exit poll due to it is not envisaged in its charter, although it has been regulated in the Law on NGOs.

<sup>6</sup> Law on state registration of legal entities. "If the founders of non-government organizations are foreigners and having permanent right of living in Azerbaijan Republic, or those who don't have citizenship – document proving their right of permanent living" (article 5.4.4-1)

<sup>7</sup> Regulation on the Ministry of Justice. "To raise a claim by the court on unreliable registration of non governmental organizations if there happened legislation violations during its formation" (10.6.)

Ministry of Justice in different regions, because people need to spend a lot of time and to make additional payments in order to come to Baku from regions.

**Centralized registration body:** According to the 9.12 article of the regulation of the Ministry of Justice, the Ministry compiles the centralized registration process. The centralized registration organ demands NGOs founded in the regions to come to Baku for registration and participate in a long registration process and it increases the expenses of constitutors. Good experiments demand that registration process should be implemented in a very simple, easy, cheap way and in a very short period of time.

**Time:** According to the 8.1 Article of the Law on State registration of juridical persons, “registration of non-governmental organization that wants to get juridical persons status, as well as state registration of the branches of juridical persons should be implemented within no more than 40 days”. Again, according to the 4.5 article of the law, while considering time defined by this law, only working days are taken into account. However, 7.1 Article of that law defines that “state registration of non-governmental organization that wants to get juridical status, as well as registration of the branches of juridical persons should be implemented within no more than 3 days”. This will cause the extension of registration process.

Besides, according to the law, if there appears necessity of additional investigation during checking in exceptional cases, then this period can be prolonged until 30 days. At the result, state registration of the organization can take months. One window system of non-governmental organizations is created in Azerbaijan and so citizens can register juridical persons with one window system within 3 days. It means that the government has enough resources and good experience to make registration process of NGOs much easier and simple. However, political will is required for this purpose and the government is required to implement its international obligations.

**Procedure which is not intended in the law:** Besides, another problematic issue about the registration is that the decision of registration is accepted according to the experience and procedure edge from the law. So that although registration responsible body is the Registration and Notaries Department of the Ministry of Justice, but in experience officials of registration bodies note that they can come to the final decision only after the meeting of the Board of the Ministry of Justice. Rules of the meeting of the Board of the Ministry of Justice are still not known. This will cause prolong of the registration process.

#### ***Refusal decision from the registration:***

- a. Refusal decisions are always made by the formation of “Rules on the state registration of non-governmental organizations and educational institutions”, according to the 5.1 article of the Board of the Ministry of Justice. It is mentioned in that article that the presented documents are refused from registration only if they are not appropriate to the Constitution of Azerbaijan Republic and other legislative acts. It is mentioned in the legislation that all insufficiencies should be found out at the same time;
- b. It is a simple case to require additional documents and information (support letter from the central and local executive authorities, curriculum vitae, and work experience) from registration office. To require such additional documents in registration process isn’t met by protest by the applicants.
- a. Repeated amendment demands. The legislation defines that all insufficiencies which are not the reason of refusal should be found out and presented for their cancelling.<sup>8</sup>

---

<sup>8</sup> “Rules on state registration of non-governmental organizations and educational institutions” Article 4.2.

**Unclear internal procedure of registration body.** Observation and analysis show that acceptance of decisions on registration applications is prolonged on the basis of administrative experience and procedure which are not intended in the law. So responsible organ for registration is Registration and Notary Head Office of the Ministry of Justice, but in practice the officials of that registration organ note that they can give a final decision only after the board of the Ministry of Justice. The rules regulating the form of the board meeting of the Ministry of Justice are still not obvious for the community. This leads to the unduly prolongation of the registration process. In practice refusal decision of registration application is given by the Board of the Ministry of Justice, or sometimes by the Registration and Notary Office of the Ministry of Justice and this is the result of the contradiction which is not intended in the legislation.

**Non-disclosure.** According to the 9.12 article of the presidential decree on the approval of the declaration on the Ministry of Justice, the Ministry carries responsibility to compile the centralized state registration of non-governmental legal entities, as well as educational institutions. Besides, according to the “Rules on state registration of non profit institutions and educational institutions”, information on the registered NGOs should be electronically published every month. This is also due to the fact that the number of the registered NGOs is very insignificant and such statistic information can put the registration body in a bad situation.

### **Reporting.**

Azerbaijan NGOs have to report not only to the donors, but also to some government institutions – local offices of the State Social Defence Fund, local statistics departments, tax organs and the Ministry of Finance. Reporting issues are regulated with corresponding theses of the legislation and reporting in not an exact time will lead to some fines in the legislation.

NGOs have some liabilities after their state registration:

- To stay on registration queue at the Ministry of Taxes, Social Defence Fund and statistics committee;
- To ensure the registration of its members within the 30 days after the registration at the Ministry of Justice;
- To register all grant agreements at the Ministry of Justice;
- To submit financial report to the Ministry of Finance till April 1 each year;
- To submit appropriate reports to the Ministry of Taxes and Social Defence Fund once in three months;

One of the problems of NGOs is their difficulty in reporting issues. So the number of pages of only financial report which is to be submitted to the Ministry of Finance is not less than 10 pages.

**The repeating report request and inconsistent procedure.** Although NGOs submit a financial report to the Ministry of Finance every year, but the Ministry carries the responsibility to check financial reports. Ministry of Finance submits financial reports of NGOs to the Ministry of Justice. Ministry of Justice requires the submitted information and other financial documents from the Ministry of Finance and this leads to additional difficulties for NGOs.

### **Restrictions in the activities of NGOs**

1. According to the current legislation, non-governmental organizations cannot participate in the elections of the President, Milli Majlis and municipalities; they also cannot financially support

political parties. NGOs also cannot be engaged with political activities. Such difficult theses make NGOs avoid from carrying out exit poll in the elections, evaluation and other control activities on the eve of elections as it happened recently, at the presidential elections 2013 in Azerbaijan.

2. Permission procedure practice is formed about the events carried out by NGOs. Although it is contradictory to the legislation, in practice NGOs should inform local executive authorities, President Administration about the events they want to carry out and get admission for it. Usually if NGOs don't follow this rule, the events carried out by them are destroyed by the local Police.

3. Ministry of Justice has a strong control over NGOs. Although there are complaint mechanisms in the legislation, it is impossible to cancel warnings with the court in non-independent court system where head of Judicial-Legal Council is minister of Justice.

## **NGO access to financial resources**

**Legislation regulating financial frames is a very limited and complicated process. The limited law amendments limiting NGO access to financial resources made the situation much more complex.**

According to the law on Public Unions, NGO properties can be formed from the following sources: (i) regular or forever membership fees of the founders or public unions;<sup>9</sup> (ii) property rights and volunteer donations;<sup>10</sup> (iii) incomes from the sale of goods, services and works;<sup>11</sup> (iv) shares, loans, dividends from valuable papers and deposits, incomes;<sup>12</sup> (v) incomes from the usage of the property or at the result of its sale;<sup>13</sup> (vi) grants;<sup>14</sup> (vii) other incomes which are not prohibited by legislation.<sup>15</sup>

According to the amendment suggested in the Article 223 of Administrative errors code, officials are fined from 1500 to 2500 AZN, legal entities are fined from 5000 to 7000 AZN due to the non submission of the copies of agreement and decisions on grant receiving to the appropriate executive authorities.

**Unregistered grant agreements.** Agreements on grant receiving by physical and legal entities of Azerbaijan Republic should be registered at the appropriate executive authority.<sup>16</sup> As well as, it is noted in the law that operations cannot be carried out on unregistered grant agreements (decisions).<sup>17</sup> So it is requested from NGOs to register all grant agreement at the Ministry of Justice for all activities and financial operations on the projects. Without such registration it is impossible to carry out project activities and financial operations.

---

<sup>9</sup> Mad., 24.0.1

<sup>10</sup> Mad., 24.0.2

<sup>11</sup> Mad., 24.0.3

<sup>12</sup> Mad., 24.0.4

<sup>13</sup> Mad., 24.0.5

<sup>14</sup> Mad., 24.0.6

<sup>15</sup> Mad., 24.0.7

<sup>16</sup> Azerbaijan Republic Law about Grant, Article 4.

<sup>17</sup> Azerbaijan Republic Law on Grant, Article 5.

**Grant agreement and financial support without any decision:** According to the Law on “Freedom of religious belief and religious organisations” and “Non-governmental organizations (public unions and funds)” dated in February 15, 2013 of Azerbaijan Republic, without any grant agreement (decision) religious unions, non-governmental organizations, as well as departments of the foreign non-governmental organizations cannot accept any financial resource.” First of all, this created limitations and problems for the activities of representatives of foreign non governmental organizations. Thus, branch and representations usually receive such financial resources in an easy way until this law amendment, but after this amendment special grant decision or agreement is demanded for receiving such a financial support.

**Problematic registration procedure of grant agreement.** According to the legislation, after the grant agreement is signed, copies of grant agreements and decisions should be sent to the appropriate local executive authorities of Azerbaijan Republic within 30 days. In case if they are not sent, then officials are fined from 1500 to 2500 AZN, legal entities are fined from 5000 to 7000 AZN.<sup>18</sup>

Legislation demands that the notarial affirmed copy of the grant agreement should be submitted to the Ministry of Justice. Signature and stamp of both parties is required for notarial affirmation of grant agreement. Agreements which were written in foreign language should be translated into Azerbaijan language. However Notary approves only signature of persons. Thus, usually transfers of grant amounts documented through e-mail are not approved by the Notary and that’s why they might not be accepted by the Ministry of Justice.

#### **Rules that create unfavorable environment for gathering donation and membership fees.**

**Rules of gathering unsuitable donation.** According to the Law on changes to Azerbaijan Republic Law on “Non-governmental organizations (public unions and funds)” dated in February 15, 2013, the following theses have been added to Azerbaijan Republic Law on “Non-governmental organizations (public unions and funds)”:

- 24-1.4. Money resources are accepted by transferring to the bank account of non-governmental organizations. According to the regulation, non governmental organization of which the main objective is charity, can accept donations of 200 AZN in cash.
- 24-1.5. Information on the amount of donations and people accepting this donation is included the financial report submitted to the appropriate local executive authority.

The mean essence of 24-1. Article added to the Law on “Non-governmental organizations (public unions and funds), the donations should be transferred to the bank accounts of non governmental organization. Only 200 AZN amount can be accepted in cash by NGOs of which objective is charity. The information on the amount of donations and people receiving it should be reflected in the annual financial report submitted to the Ministry of Finance. Such a rule caused difficulties and limitations for NGO. Thus, NHOs of which the main objective is not charity, can receive all donations only through bank. This rule is additional difficulty and limitation for NGOs.

Azerbaijan NGOs which has very limited financial resources has faced with non adequate financial sanctions after the current amendments.

There are new law changes which intend that NGOs should be fined from 5000 to 15000 AZN due to the not informing about receiving donation. According to these changes, law violation objects resources will be confiscated.

---

<sup>18</sup> Administrative Errors Code, Article 223-1.1.



**Increased amount of penalty.** The amount of fines has been increased due to the not submitting copies of contracts and decisions to the Ministry of Justice for registration. Thus, if legal entity was fined from 2000 to 2500 AZN before changes, but with this change the amount of the fee increased three times. According to the changes, due to the violation of rules, officials are fined from 1500 to 2500 AZN, legal entities are fined from 5000 AZN to 7000 AZN.

- It is prohibited to accept any financial assistance without having any grant agreement and there is financial sanction due to this law violation: 1) officials are fined from 2500 to 5000 AZN by confiscating resources and things which have been direct object of administrative error; 2) NGOs are fined from 8000 to 15000 AZN.
- Officials are fined from 1500 to 3000 AZN, legal entities are fined from 5000 to 8000 because of not including information about the amount of donations and persons receiving these donations to their financial report submitted to the Ministry of Finance.
- Physical persons are fined from 250 to 500 AZN, officials are fined from 750 to 1500 AZN, and legal entities are fined from 1500 to 7000 AZN due to the cash payment of donations to the NGO.
- Official are fined from 1000 to 2000 AZN, legal entities are fined from 7000 to 10000 AZN due to the cash receiving of financial resources by NGOs.

## **Monitoring and control**

The Ministry of Justice has a responsibility to monitor NGO activity and its monitoring activities are regulated in the regulation approved with the President Decree. This legal ground gives wide discretion to Ministry of Justice a wide and very contradictory monitoring/control power over NGOs and it causes serious problems in practice.

Ministry of Justice Regulation approved with President Decree #391 dated in April 18, 2006 (8.7, 9.9, 9.11, 9.11-1, 9.12, 9.13, 9.32-1, 10.6, 10.8, 10.9 causes of the Regulation) gives wide opportunities to the central local executive authority over NGOs.

### **Arbitrary intervention cases in the practice:**

With the presidential decree of Azerbaijan Republic #130 dated in July 20, 2009, the article 9.32 was added to the Regulation on the Ministry of Justice.

It is noted in that article that the Ministry of Justice has a responsibility to implement control functions against terrorism financing and legalizing the property and money resources received in a crime way.

In the practice, the Ministry of Justice refers to this thesis in all monitoring issues and this was resulted in a wide interventions and limitations for NGO activities. This duty caused serious interventions for NGOs in practice. Thus, although there are not any experienced officials in finance and accounting departments of the Ministry of Justice, they check financial reports of NGOs sent to the Ministry of Finance and require from NGOs to send their all financial documents to the registration organ. It is officially warned to the protesting NGOs. According to new legislation, NGOs receiving two warnings during a year can be dissolved in the court by the Ministry of Justice.<sup>19</sup>

---

<sup>19</sup> Regulation on the Ministry of Justice, Article 10.6

**The limited law changes in the current year and the influence of amendments over the NGOs operating without state registration:** Activity opportunities of NGOs operating without state registration is becoming significantly limited. Until changes and amendments, the legislation prohibited to sign a grant contract to those NGOs which don't have state registration. According to the law on grant, grant agreements can be signed with legal and physical persons. NGOs which don't have registration couldn't sign a grant agreement, because they were not legal entities. However NGOs which don't have registration could operate and sign a grant agreement, because there wasn't any sanction for their activity in the legislation. As an alternative variant, bank account of a physical person of any other registered NGO was being used. However changes and amendments put an end to this practice and requires from NGO to sign a grant agreement. Unregistered NGO is not a legal entity, that's why it is not possible to approve grant agreement in Notary even if it is signed. However the legislation requires notary approval of grants for the registration.

**The limited law changes in the current year and impacts of amendments on foreign NGOs:** Changes and amendments are also concerned to the foreign NGO branches and representations operating in Azerbaijan. It is required from foreign NGOs to register their branch and representations for their activity in Azerbaijan. To carry out activity without registration is lawfully prohibited. Besides, from legal point of view, it is considered questionable and due to political reasons the government approached in a wrong way to this. However changes and amendments prohibit this kind of activities. Despite of this, it is very difficult to apply sanctions to those foreign organizations operating without branch and representation. It seems impossible to apply sanctions to the foreign NGO without bank account, officials and property. The only possible thing is not to allow foreign NGO to carry out events and make activity.

**New registration procedures of the foreign NGO branches and representations:** After the decree of the Cabinet of Ministers dated in March 16, 2011 about "Rules on Conducting Negotiations for Preparation and Signing of an Agreement for the State Registration of Branches or Representative Offices of International Non-governmental Organizations in the Republic of Azerbaijan", it is required from international organizations' local branches and representations to register again at the Ministry of Justice. This decree authorize Ministry of Justice to negotiate with international NGOs and allow them to be registered only agreed period in Azerbaijan with specific conditions such as "ensuring respect national and moral values of Azerbaijan" which is not interpreted further.

## **Proposed solution(s) and recommendations**

### **For the government:**

1. To improve the current legislation according to the good international practice by demonstrating good political will in order to provide freedom of joining;
2. To expand public discussion, consultations and dialogues with NGOs;
3. To improve confidence atmosphere and cooperations between NGOs and government institutions.

### **As well as, for the improvement of legislation frame:**

To simplify NGO registration process:

- To make registration process speedy, cheap and simple;
- To define time limits for registration (for example 3 days);
- To determine time limit for the state to review applications;
- To apply simplified notification method of the changes in the formation documents.

In order to make acces to financial resources easy, to simplify the existing financial, tax regulations/rules according to good experiences and international law;

- To simplify grant receiving rules;
- To simplify donations and membership fee gathering procedures;
- Re-design tax and fiscal policies of government.

To incite good management and international practice in the control and regulation over NGO activity;

- To specify control and monitoring rules over NGO activity;
- To re-define report demands according to the activity volume of NGOs in order simpilify reporting procedures;
- To improve proactive and stimulative regulations by liquidating high penalties;

- To respect realization of the fundamental freedoms of free assembly, speech in NGO activity;