

Problems of NGO Registration in Azerbaijan - a Survey

Summary of Findings

Background

This report represents the findings of a survey carried by ICNL in the framework of a joint initiative of the OSCE Office in Baku and ICNL Baku during August – November 2002. The survey was conducted as part of planned broader activity of the OSCE and ICNL aimed at further developing the civil society in Azerbaijan. The objective was to gain a better knowledge about the current level of freedom of association exercised in Azerbaijan and to identify the main problems and obstacles of unhindered development of civil society in the country.

The survey specifically focused on the problem many NGOs report facing with regard to registration with the Department of Registration of Legal Entities at the Ministry of Justice. Both ICNL and OSCE offices in Baku have received numerous complaints from NGOs about the difficulties they encounter while seeking to achieve the presumably simple legal act of registration.

Methodology

Information was gathered from the NGOs that answered a notice calling for the submission of data and documentation for the survey, published in the newspapers “Yeni Musavat” and “Azadliq”. The notices were published repeatedly 25 times from August 28th 'til October 1st 2002. 67 non-registered NGOs responded to the call and submitted the requested information and documentation. The NGOs were based in Baku as well as in the countryside districts of Azerbaijan.

The following types of documentation were requested from the NGOs:

- i. their charters
- ii. application for registration to the Ministry of Justice
- iii. any other official communication with the Ministry, including possible denial decision.

Among the 67 collaborating NGOs, a broad cross-section of work areas were represented:

- i. environmental
- ii. human rights
- iii. journalism
- iv. elections
- v. research
- vi. science
- vii. migration
- viii. humanitarian
- ix. refugee support
- x. ethnic relations
- xi. economy
- xii. culture
- xiii. education.

The documentation submitted was scrutinized by two lawyers, which were contracted by the ICNL:
Annagi Hadgiyev (President of Lawyers Association of Azerbaijan)
Intigam Aliyev (President of Legal Education Society)

The lawyers have reviewed the documentation from the point of view of its conforming to the requirements of the Azeri legislation in force governing registration of NGOs:

- i. Civil Code of the Republic of Azerbaijan
- ii. Law on State Registration of Legal Entities
- iii. Law on Non-governmental organizations (associations and foundations)

A legal opinion was elaborated on both the documents of the NGOs, as well as official communications and decisions of the Ministry as to whether they meet the formal and substantial requirement prescribed by the legislation in force in each individual case.

Statistical data on NGO registration

According to information from the Department of Registration of Legal Entities of the Ministry of Justice, on the 1st of November 2002, there was 1400 organizations registered. Out of them, 52 work with children and youth, 27 are those of ethnic and national minorities, 22 are environmental, 30 are women NGOs, 53 assist to handicaps, IDPs and was veterans, 17 deal with health problems and 35 are legally orientated organizations.

Based on information obtained from the ‘umbrella NGO organizations’ a list of non-registered NGOs was compiled. The following organizations contributed information from their databases:

- i. ISAR-Azerbaijan
- ii. UNDP Recourse and Training Center
- iii. National NGO Forum
- iv. NGO Congress

According to the above mentioned sources, there have been at least 600 organizations established in Azerbaijan that never been registered

(The list of non-registered NGOs established is available at ICNL)

Main problems with the implementation of the legislation on registration of legal entities

Documentation of the following NGOs was scrutinized:

- 1. Azerbaijan International Relations' Center Public Association
- 2. Democratic Reformers Support Center
- 3. Azerbaijan Social Economic Development Center
- 4. “Individuals and Environment” Public Association of Development of capacity of Intelligent People
- 5. “Sumgait Youth” Public Association
- 6. Azerbaijan National Democracy Foundation
- 7. “Journalists’ Research Center” Public Association
- 8. “Aran” Humanitarian Education Public Association
- 9. “Protection of Environment and Ecology” Public Association
- 10. “Gedabey- Development” Charity Public Association
- 11. Confederation of NGOs- Public Association
- 12. «The Lawyers of XXI century» Public Association
- 13. “New Akropol” Cultural Center Public Association
- 14. Development of Azery Society Public Association
- 15. Azerbaijan – Russian Youth Friendship Organization - Public Association
- 16. Azerbaijan DAHLL Friendship Organization Public Association
- 17. Regional Co-operation of Azeri and Georgian People Public Association
- 18. Municipality’s Consultant and Support center- Public Association
- 19. “Dalga” Ecology and Protection of Natural resources Public Association
- 20. Center of integration to Democratic Europe- Public Association
- 21. For the sake of Democratic society Public Association
- 22. Ecological education and monitoring Public Association
- 23. Migration Research Center- Public Association
- 24. “Nijat” Refugee’s Support Center Public Association
- 25. “SIF” Ancient secrets’ scientific researches Public Association
- 26. Talish’s International Development Found
- 27. “TEAM” Support of development Public Association
- 28. “Transparency- Azerbaijan” Public Association
- 29. “Vatan” Institute of Democracy Public Association

30. Human Right protection of homeless Baku population Public Association
31. "Garabag Gazies" Public Association
32. "Development of culture of the society" Public Association
33. Education in a field of electron information- Public Association
34. Azerbaijan Internet Forum- Public Association
35. "Clean World" for the sake of human rights Public Association
36. Research and Support in a field of Family Planning Public Association
37. Lawyer Ladies for the sake of Legal Reforms Public Association
38. "Ecolex - Azerbaijan" Environment Law Centre
39. Political and Economical Reforms Centre
40. Azerbaijan Intellect Center
41. "Gaygi" Union for IDP, Refugees and Disabled of the Republic
42. "Tolerance" Human Rights' Protection Public Association
43. "Ecoright" Public Association
44. Azerbaijan Development of Intelligence Public Association
45. World Azerbaijan – Turkish Women Protection Centre
46. Young National Democrats Union
47. Businessmen Union
48. Sheki "Bioflor" Ecological Education Public Association
49. Sheki Craftsmen's Association
50. Azerbaijan Ladies for Education and Charity Public Association
51. Azerbaijan Volunteers Union
52. "Khinalig" Cultural Center
53. "Friendship" children's and teen's Public Association
54. Protection Rights of Azerbaijan Citizens working with the Foreign Companies Public Association
55. "Destek" Public Association
56. Care to the Intellectuals with the physical disabilities Public Association
57. Centre of Public Initiatives
58. Women organization for rational development
59. Public Association of Volunteers struggling for freedom of Azerbaijan and integrity of territories
60. International defens of Prisoner's rights Public Association
61. Support Organization for Social Problems of invalids
62. Azerbaijan Transport workers' Public Association
63. "Taxes club" NGO
64. Inam Center for Pluralism
65. Azerbaijan Creative Engineers Society
66. Research and development center of moral values of education
67. Unity of Ladies Public Association

Summary of the findings

The following is a list of the most commonly observed problems and violations of the law that have occurred during the registration procedure of the NGOs reviewed, as seen by the legal experts, based on documents submitted by the NGOs.

Each point is elaborated by a brief extract from the report prepared by the legal experts.

The complete individual reports on respective NGOs are available at ICNL together with all documents reviewed.

i. Lack of any formal decision

About 30 out of 67 NGOs have never received any final decision (either on registering or refusal to register) of the Ministry of Justice. Most of them have not received any communication from the Ministry.

ii. Illicitly found denial decision

In several cases, the letters of refusal from the Ministry fails to indicate the legal bases for refusal of the registration. In some denial letters the Ministry of Justice does not make a correct reference to law or the provisions of law are interpreted incorrectly.

iii. Requirement of submitting extra documentation, not required by law

It appears to be a common practice of the registering department to ask the applicants to submit additional documentation, which is not prescribed by the law in force, the most common examples being: copies of passports, employment history records of the founders.

iv. Exceeding of deadlines for registration or refusal to register

Although the deadline set forth in the legislation for issuing a decision on registration or written letter of denial is 10 days, it was found that often the term in cases where any decision was issued ranged from 2 – 3 months up to 1-2 years.

v. Additional criteria applied

As it can be observed from the official communication with the Ministry of the applying NGOs, the registering body of the Ministry takes a question of expediency /capability of NGO to pursue the aims set in the charter into account while deliberating on registering or denying registration. This practice contradicts the law, which gives exhaustive list of criteria to be considered. Under article 15 of Law On Registration Of Legal Entities Refusal in state registration of legal entities, for the reasons of inexpediency of their establishment will not be allowed.

vi. Repeated requests for corrections in documents

Contrary to the law, it often happens that repeatedly new and new corrections are requested. All shortcomings in the application and its supporting documents that require correction should be requested by the registering body at once.

vii. Unclear internal procedure within the registering department

As the analysis shows, some NGOs were refused registration by a decision of the Collegium of the Ministry of Justice, while in other cases it was the Head of the Department of Registration of Legal Entities who took the decision. It is thus unclear who actually holds the authority of deciding upon registration. Presumably govern by internal instructions, these are not public.

viii. Non-availability of a public information about NGO register

According the law, information about registered entities should be published monthly in the media by the registering authority. This doesn't happen and one of the consequences is impossibility for new NGOs to check whether the name they chose is not already registered, which forms one of the legal reasons for denying of the registration.

Conclusion

In European practice, registration of NGOs is a formal legal act, allowing them to acquire legal personality and thus become capable of possessing rights and obligations and of entering into legally binding contracts. In various state authorities, it is practically a formality, often reduced to simple notification. Legal grounds for refusal of registration are always limited and exhaustively listed in the legislation and this is also the case in Azerbaijan.

In no country are possible future activities examined in advance, at the moment of registration, i.e. before they can possibly happen. This doesn't preclude control of the law enforcement authorities over activities of NGOs, as any other persons, during their existence. Each state possesses a broad range of legal tools to exercise its control over their activities.

While the law of the Republic of Azerbaijan reflects fully these principles¹, and the new law may, reportedly, even further simplify the registration procedure, its current practical implementation² is clearly not favourable for the continuing development of civil society and raises concern.

The authors of this survey share the opinion that on the path towards the fully satisfying situation in exercise of the freedom of association, there is room for improvement on both the State's and the civil society's sides.

NGOs should be made more aware of the obligations and requirements imposed upon them by legislation, as well as of the possibilities and legal remedies available for those seeking rights and justice, and be empowered to use them.

The data assessed in this report clearly demonstrates a singular failure, on the part the state authorities, to appropriately implement laws designed for their use in the registration of NGOs. An ignorance of the role of NGO and civil society is felt to be largely to blame in creating obstacles, but failure to observe the law is what gives rise to greater concern. We are forced to conclude that it is the apparent conscious reluctance of state authorities to allow the creation and registration of independent NGOs, which is the primary cause for difficulties and must be addressed.

In order for Azerbaijan to acknowledge the obligations that it undertook by signing the international and European human rights documents it is incumbent upon the State to redefine its policy towards independent NGOs and ensure the full exercise of freedom of association through greater compliance with existing legislation.

¹ This principle forms a part of the OSCE Commitments. At the Copenhagen meeting on the Human Dimension (1990) the participating states agreed to guarantee freedom of association.

"The right of association will be guaranteed. The right to form and - subject to the general right of a trade union to determine its own membership - freely to join a trade union will be guaranteed. These rights will exclude any prior control. Freedom of association for workers, including the freedom to strike, will be guaranteed, subject to limitations prescribed by law and consistent with international standards".

(Copenhagen Document, Chapter II, paragraph 9.3).

² It was reaffirmed by the European Courts of Human Rights in a decision in July 1998 that there exists the **positive duty** of the State to provide an association for facilities to form a legal entity. The Court stated that "the right to form an association is an inherent part of the right to freedom of association: "That citizens should be able 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 the right would be deprived of any meaning."