

Department for the Execution of Judgments of the European Court of Human Rights
DGI - Directorate General of Human Rights and Rule of Law
Council of Europe
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5 September 2014

Request for enhanced supervision of the execution of the European Court of Human Rights ('ECtHR') judgments establishing violations of the right to freedom of association: Ramzanova and Others v Azerbaijan (44363/02); Nasibova v Azerbaijan (4307/04); Ismayilov v Azerbaijan (4439/04); Aliyev and Others v Azerbaijan (28736/05); and Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan (37083/03).

We, the undersigned organizations, address the Committee of Ministers (the 'Committee') in its supervisory capacity, pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (the 'Committee's Rules'). This letter provides the Committee with an update on:

- a) The recent context in Azerbaijan of an unprecedented increase in the arrest and detention of human rights defenders and the harassment and paralysis of independent non-governmental organisations ('NGOs'), as part of a wider and systematic attempt to silence civil society; and
- b) The restrictive amendments to the laws relevant to the operation of NGOs in Azerbaijan since 2009, which amount to a structural obstacle to the functioning of civil society.

The abovementioned judgments established violations of the right to freedom of association in Azerbaijan. In particular, the judgments addressed the following issues as being in contravention of the European Convention on Human Rights ('the Convention'):

- a) The failure by the Ministry of Justice to respond, within the statutory time-limits, to a request for state registration of an association established in Azerbaijan, amounted to a *de facto* refusal to register the association; and
- b) The dissolution of an association by the Ministry of Justice for reasons which were "not necessary in a democratic society" (i.e. neither compelling nor proportionate to the legitimate aim pursued).

With the exception of *Aliyev and Others v Azerbaijan* (where the NGO in question remains unregistered), the individual measures ordered by the ECtHR have been implemented in these cases. However, given the ongoing and increasingly severe crack down on civil society and the right to freedom of association in Azerbaijan, urgent general measures are required.

In light of the above, we respectfully request the Committee to:

- a) **Place the supervision of the execution of the abovementioned judgments under the enhanced supervision procedure, which would allow the Committee to prioritise the implementation of these cases, and engage in a dialogue with the Azerbaijani government and civil society in order to address the violations and foster respect for the right to freedom of association;**
- b) **Request the Azerbaijani government to provide an updated action plan/report on the execution of these judgments, particularly in light of the repressive developments detailed below; and**
- c) **To hold debates on these judgments and the right to freedom of association in Azerbaijan under the enhanced supervision procedure, and call upon the government of Azerbaijan to enact the appropriate general measures to improve the situation of human rights defenders and civil society.**

A. Recent context: an unprecedented increase in the arrest and detention of human rights defenders and the harassment and paralysis of independent NGOs in Azerbaijan

Currently, we are witnessing a dramatic crackdown on civil society in Azerbaijan, including the arrest and detention of NGO leaders on criminal charges, the freezing of personal and/or NGO bank accounts, smear campaigns against high-profile human rights defenders and independent NGOs (referred to as 'traitors' and 'anti-national elements')¹, the seizure of their equipment and materials, and the forceful closure of independent NGOs². As the examples detailed below illustrate, the right to freedom of association is at the heart of this wave of repression of human rights defenders and their NGOs in Azerbaijan.

Disturbingly, the rise in the repression of human rights defenders and independent NGOs has coincided with Azerbaijan's chairmanship of the Committee. Within the space of a few weeks, the leaders of several of the most active independent Azerbaijani NGOs have been put behind bars. The purported justification of this crackdown is the criminal case launched by the Prosecutor's office against a number of domestic and international NGOs pursuant to Articles 308.1 ('abuse of power') and 313 ('service forgery') of the Criminal Code of Azerbaijan (the alleged basis for the case is "*irregularities found in the activities of a number of NGOs of Azerbaijan Republic, and branches or representative offices of foreign NGOs*").³ This led to the freezing of the organizational bank accounts of more than 20 local NGOs, and the personal ones of those NGO leaders under arrest, resulting in the de facto closure of these NGOs.

On 8 August 2014, prominent human rights lawyer and the Chairman of the Legal Education Society, **Intigam Aliyev**, was remanded on pre-trial detention for 3 months, under charges of tax evasion, abuse of office and illegal entrepreneurship. Aliyev has denied the allegations and said that his arrest is politically motivated. Aliyev is a veteran rights activist with over 20 years' experience, and is one of the few Azerbaijani lawyers actively litigating before the ECtHR (including in four of the five cases that are the subject of this letter, one of which is his own case).⁴ Aliyev has been recognized as a prisoner of conscience by Amnesty International⁵.

On 5 August 2014, **Emin Huseynov**, chairman of a leading media watchdog, the Institute for Reporters' Freedom and Safety (IRFS), and one of the most prominent human rights defenders in Azerbaijan, was prevented from traveling to Istanbul in order to receive urgent medical care. The border police stopped him at the airport and informed him that the Prosecutor General's office had imposed a travel ban on him. He may face immediate arrest (and has now gone to ground). The offices of IRFS in Baku have been sealed by the authorities, its equipment has been confiscated, and its activities have had to cease.

On 2 August 2014, **Rasul Jafarov**, a prominent Azerbaijani human rights defender and Chairman of the Human Rights Club, was arrested and remanded on pre-trial detention for 3 months, under the same charges (tax evasion, illegal entrepreneurship, and abuse of power) as Intigam Aliyev. Prior to that, his personal bank account was frozen, and a travel ban was imposed on him (with his passport confiscated). He has also been recognized as a prisoner of conscience by Amnesty International⁶. The charges against Jafarov stem from the Human Rights Club's lack of state registration. The NGO was established in December 2010 and has made numerous unsuccessful attempts to register. A complaint by the Human

¹ See, inter alia, Azerbaijan's President remarks during his meeting with youth in Belagan city of Azerbaijan, August 28, 2014 (in Russian) <http://contact.az/docs/2014/Politics/083000088810ru.htm#.VAGICYC1Z5x>.

² See the [statement of the CoE Commissioner for Human Rights](#), 7 August 2014, among others.

³ [Statement](#) of the Baku-based Institute for Reporters' Freedom and Safety 'IRFS Condemns Latest Assault on Civil Society in Azerbaijan', 31 July 2014.

⁴ *Aliyev and Others v Azerbaijan* (28736/05).

⁵ [Call for an urgent action](#) of Amnesty International 'Activist detained on trumped-up charges', 12 August 2014.

⁶ [Statement](#) of Amnesty International 'Azerbaijan: Another prominent human rights defender thrown behind the bars', 4 August 2014

Rights Club is pending before the ECtHR⁷. The Council of Europe Commissioner for Human Rights, Niels Muiznieks, raised concerns over the case of the Human Rights Club in his report of August 2013, following his visit to Azerbaijan in May 2013⁸.

On 30 July 2014, another prominent human rights defender, **Leyla Yunus**, was remanded on pre-trial detention for 3 months, under charges of high treason, forgery, and tax evasion. Leyla Yunus has focused on politically motivated persecutions in Azerbaijan for many years, and has also been involved in projects aimed at improving dialogue between society in Azerbaijan and Armenia. On 5 August 2014, her husband, **Arif Yunus**, a civil society activist, was also remanded on pre-trial detention for three months on the same charges.

In May 2014, similar charges were brought against **Anar Mammadli**, Chairperson of the Election Monitoring and Democracy Studies Centre (the only domestic election watchdog in Azerbaijan), and its Executive Director, **Bashir Suleymanli**, who were sentenced to 5 years and 6 months, and 3 years and 6 months, in prison respectively. Mammadli and Suleymanli were convicted of tax evasion, running an illegal business, and abuse of power. The case was brought soon after a report was released by the Monitoring and Democracy Studies Centre, which was critical of the Azerbaijani presidential elections in October 2013.⁹

As these examples illustrate, the right to freedom of association is at the heart of the latest crackdown on human rights defenders and their NGOs in Azerbaijan. The charges against prominent NGO leaders purportedly stem from the activities of their organizations. The following charges are brought against them:

- Illegal entrepreneurship (Art. 192 of the Criminal Code)
- Abuse of power (Art. 308 of the Criminal Code)
- Tax evasion (Art. 213 of the Criminal Code)

Charges such as ‘illegal entrepreneurship’ (followed by tax evasion) have no legal basis in the national law: the law clearly distinguishes between commercial legal entities aimed at making profit and non-commercial legal entities which do not have the purpose of generating profit¹⁰. Individual entrepreneurial activity is also defined by the aim of making profit¹¹. NGOs are not prohibited from making profit as long as it is aimed at achieving its founding purposes. The Taxation Code defines when non-commercial organizations can engage in business activities, and establishes that an activity qualifies as non-commercial if the received income is used for purposes referred to in the founding charter. However, the NGO leaders who have been charged made no income out of the NGOs’ activities, and operated solely on the basis of grants from donors, which would therefore exclude them from the definition of business activity.

In conclusion: the recent unprecedented crackdown on human rights defenders and independent NGOs prevents the functioning of civil society in Azerbaijan and paralyzes its work, in violation of the right to freedom of association. The above arrests are representative of the escalation of the government’s broader attempts to silence critical voices.

B. Amendments to the laws on NGOs in Azerbaijan

⁷ Application No. 27309/14

⁸ [Report](#) of the Commissioner for Human Rights of the Council of Europe following his visit to Azerbaijan from 22 to 24 May 2013, CommDH (2013)14, 6 August 2013

⁹ [Preliminary statement](#) of the Election Monitoring and Democracy Studies Center on the findings of election monitoring, 10 October 2014

¹⁰ Article 43.5 of the Civil Code of the Republic of Azerbaijan

¹¹ Article 12 of the Civil Code of the Republic of Azerbaijan

Repressive amendments to the laws relating to the operation of NGOs were adopted in March 2013 and February 2014 respectively. These changes pave the way for further restrictions of the space for NGO activities, despite the fact that in 2011 the Venice Commission concluded that the existing NGO law of 2000 (the Law on Non-Governmental Organizations (Public Associations and Foundations) that was amended in 2009 - referred to as the 'Amended NGO Law 2009')) did not meet international standards¹². The information below addresses the Amended NGO Law 2009, as well as the recent amendments regarding registration of NGOs, the right to receive grants, and state interference with their activities.¹³

Lengthy, burdensome and arbitrarily applied registration procedures under the Amended NGO Law 2009:

State registration for human rights NGOs has become extremely problematic in Azerbaijan. In practice, acquiring legal personality is crucial for an NGO to operate effectively. Without this status, NGOs cannot receive grants or open a bank account. Thus any NGO seeking to operate effectively in Azerbaijan is subject to state registration.

The Amended NGO Law 2009 regulates the establishment and operation of NGOs in Azerbaijan. The Law on State Registration and State Register of Legal Entities of 2003 (the 'Azerbaijani State Register Law') sets out the rules and procedures for registration of NGOs. The national legal framework on the registration of local NGOs appears to be compliant with international standards. The 2009 amendments to the Azerbaijani State Register Law extended the time limit for registration of NGOs to 40 days, with the additional provision that in exceptional cases, where further investigation is deemed necessary, that period can be extended by an additional 30 days. The State Register Law established a mechanism whereby organisations automatically obtain legal status if the Ministry of Justice does not respond to their applications within the legal time limit. In addition, it required that the Ministry of Justice define and present any and all shortcomings in the application to the applicant.

However, the practical implementation of the State Register Law often results in selective and arbitrary application of the procedures for NGOs deemed critical of the government's policy. In most cases, human rights NGOs are subject to lengthy delays, and are often refused state registration, following extensive resubmissions in response to shortcomings presented by the Ministry of Justice.

In its opinion of 11 October 2011, the Venice Commission emphasised that "the Azerbaijani authorities should strive to reduce the number of cases treated in this way and they should also, ideally in an amendment to the 2003 State Register law, define the features of an "exceptional case", which is often applied to critical NGOs."¹⁴

The 3-year registration process of the Human Rights Club in Baku is a clear example of how the authorities use delays in the registration process to hamper the work of human rights groups. The Human Rights Club was established as a new NGO by a group of human rights defenders on 10 December 2010. The Club is dedicated to the protection of human rights and freedoms in Azerbaijan. Its founders submitted the registration documents in January 2011. Two months later, the Ministry of Justice returned the documents, saying copies of the founders' passports were missing. Once the required documents were resubmitted, the Ministry of Justice stated that the three founders had not each signed the decision on establishing the NGO. This document, with all the relevant signatures, was

¹² [Opinion of the Venice Commission](#) on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, No. 636/2011, 19 October 2011.

¹³ The information on the 2009 and 2013 amendments has already been provided by the Legal Education Society in its [submission](#) of 27 November 2013 under the rule 9.2 of the Committee's Rules.

¹⁴ Ibid 11, para 63

resubmitted again. After another two months, the Ministry stated that the founders had not enumerated the rights and duties of the organization's legal representative. However, there was no legal representative as the document was submitted by the founders themselves. The founders' appeals to the domestic courts were dismissed.

The case of the Human Rights Club clearly illustrates the pattern of intentional delays in the registration of NGOs, addressed by the judgments which are the subject of this letter. The basis for these delays often appears to be the alleged failure of NGOs (especially human rights groups) to comply with administrative requirements.

As the ECtHR has concluded in these (and other) judgments, extensive delay in reply to a request to register an NGO amounts to a de facto refusal to register that organisation. A case in point is the Azerbaijan Lawyers' Forum, which remains unregistered, and was addressed in the judgment of *Aliyev and others v Azerbaijan* referred to above.

In 2013 alone, at least 20 applications concerning alleged violations of the right to freedom of association by Azerbaijan were submitted to the ECtHR. In all of these cases, the applicants had faced repeated rejections of their NGO registration applications. The Ministry of Justice, in contravention of national law, rejected the applications on the grounds of alleged deficiencies in the organisations' constitutive documents. In most cases, the grounds for refusal were not contained in the relevant legislative provisions¹⁵.

Restrictions on registration of international NGOs in Azerbaijan:

The Amended NGO Law 2009 introduced increased government control over the registration of international NGOs operating in Azerbaijan. It includes a provision (Article 12.3) stipulating that state registration of branches and representations of foreign NGOs in Azerbaijan shall be carried out on the basis of an agreement signed with these organisations.

Further, Decree No. 43 of the Azerbaijani Cabinet of 16 March 2011 ('Decree No. 43') specifies the rules for the registration of foreign NGOs, and lists the relevant criteria. An NGO must inform the authorities of its purpose, its activities, and their significance for Azerbaijani society. It subsequently lists the conditions that NGOs must meet in order to conclude an agreement with the authorities, which is required in order to operate. These conditions are:

- a) Compliance with the Constitution of Azerbaijan, the laws, and other normative legal acts;
- b) Respect for national moral values;
- c) Non-involvement in political and religious propaganda;
- d) Commitment not to conduct activities in the occupied territories of Nagorno-Karabakh and make no contact with the separatist regime in these territories; and
- e) Provide the required information to the state registry within the timeframe established by the 2009 amendments to the law on NGOs.

The language of the Amended NGO Law 2009 and Decree No. 43 is vague, which presents the risk of arbitrary and/or excessively strict application. For instance, the Amended NGO Law 2009 does not provide a clear definition of "national moral values" or "political and religious propaganda". Moreover, there is no specific timeframe within which the negotiations should be concluded and the agreement signed. This gives rise to a concern that this gap in procedural regulation will result in lengthy delays, as has happened with certain national NGOs described above.

¹⁵ For detailed list of cases, please see the [NGO communication](#) submitted to CoM by the Legal Education Society, Azerbaijan, on 27 November 2013

As the Venice Commission has concluded, the abovementioned amendments and Decree No. 43 "unfortunately overturn the previous efforts to meet with the requirements of international standards."¹⁶ The Commission concluded that the procedure for the registration of NGOs (including in respect of branches and representatives of international NGOs), is particularly problematic.

By way of example, the Azerbaijan Human Rights House (the international branch of the Human Rights House Foundation, an NGO registered in Norway), has been subjected to the application of these restrictive provisions. The Azerbaijan Human Rights House was registered Azerbaijan in 2007, before Decree No. 43 came into force. In March 2011, the Azerbaijan Human Rights House was ordered to cease all activities and its registration was suspended until an agreement with the authorities was concluded. In spite of regular communication with the Azerbaijani authorities and the submission of a new registration application on 3 November 2011, no further progress has been made and the organisation remains closed¹⁷.

New restrictive amendments on the operation of NGOs, including the right to receive funding:

In addition to the complicated and burdensome registration procedures, recent legislative amendments have placed significant constraints on the operation of unregistered NGOs. In March 2013, the government introduced legislative amendments increasing sanctions for NGOs that receive donor funding and do not register the grant agreement with the Ministry of Justice. The highly punitive nature of the fines serves as a pretext for government harassment of NGOs. The amendments also make it practically impossible for unregistered groups to fund their work through donations and grants.

The following amendments were introduced into the Code of Administrative Offences (2000):

- a) Failure to submit copies of grant agreements to the Ministry of Justice within 30 days of the signing of the agreement may result in a fine of between 5,000 and 7,000 AZN; a founder may be held personally liable and fined from 1,000 to 2,500 AZN;
- b) Absence of a grant agreement may result in fines of between 8,000 to 15,000 AZN and/or property confiscation of an NGO; individuals may be held personally liable and fined from between 2,500 to 5,000 AZN;
- c) Failure to include the requisite information on donations received by an NGO or persons donating the funds in financial reports submitted to the relevant government agencies can lead to a fine ranging from 5,000 to 8,000 AZN for NGOs and between 1,500 to 3,000 AZN for NGO managers;
- d) A cash donation higher than 200 AZN would lead to a fine of 7,000 to 10,000 AZN for an NGO manager, while the NGO itself would be fined between 1,000 to 2,500 AZN;
- e) Donors who make gifts by cash may face fines ranging from 250 to 500 AZN if a donor is a private person, 750 to 1,500 AZN if a donor is a manager of a legal entity, and 3,500 to 7,000 AZN if a donor is a legal entity.

These amendments will be particularly damaging for unregistered NGOs and groups. Previously, individuals affiliated with unregistered groups could sign grant agreements and, without threat of sanction, use the funds to support activities conducted by the unregistered organisation. The latest amendments were swiftly adopted without any consultation with civil society, and have been

¹⁶ Ibid 11, para 117

¹⁷ [Statement](#) of the Human Rights House Network on the closing of the Human Rights House Azerbaijan, 11 March 2011.

condemned by many national and international human rights groups as particularly restrictive and damaging to freedom of association in Azerbaijan¹⁸.

On 3 February 2014, new amendments placing additional restrictions on independent NGOs were signed into law¹⁹. The amendments introduced a number of new obligations for Azerbaijani and foreign organizations, including a requirement for individual recipients of grants to register grants with the Ministry of Justice in the same way as organisations, the registration of sub-grants as well as original grants, and the requirement that agreements between foreign NGOs and the Ministry of Justice must include an expiry date. Significantly, the provisions of the NGO law will also apply to branches and representations of foreign NGOs.

The February 2014 amendments lay out the following additional grounds for suspension of an NGO's activities: when the NGO's activities impede measures to resolve emergency situations; when the NGO has been penalised for failure to rectify deficiencies identified by the Ministry of Justice and has not done so; and when the NGO breaches the rights of its members.

The amendments introduce a number of new sanctions, including for:

- a) The failure by domestic and foreign NGOs to submit the necessary information for state registration of legal entities;
- b) Liability for signing contracts based on non-registered grant agreements;
- c) The failure to adjust constitutive documents of NGOs (including foreign NGOs) in accordance with local legislation;
- d) Conducting any activity on the changes made to the constitutive documents before such changes have been registered;
- e) The failure of NGOs to maintain a registry of members;
- f) The failure to conclude contracts with volunteers;
- g) The failure to direct income from commercial activity to statutory purposes;
- h) Any operation contrary to statutory purposes;
- i) Impeding an investigation into the compliance with domestic legislation of an NGO's activities (including those of representatives of foreign NGOs in Azerbaijan);
- j) Failing to answer information requests and requests for documents from the relevant state body;
- k) Submitting false information;
- l) Failure to address deficiencies identified in the relevant notification by a state body; and
- m) Violation of the rules on the operation of branches or representations of foreign NGOs (i.e. operating without registration).

Further, the amendments establish penalties for new and existing obligations of NGOs. For example, new administrative offences are punishable by fines, which have increased to 2500-3000 AZN (approximately 2600-3100 EUR) for the NGO and between 1000-2000 AZN (approximately 1000- 2100 EUR) for the directors of national and foreign NGOs.

The current law on the registration and operation of NGOs in Azerbaijan continues the trend of undermining respect for the right to freedom of association and civil society in the country. It increases

¹⁸ Among others, see the statements of Baku-based [Institute for Reporters' Freedom and Safety](#) 'Council of Europe should condemn repressive NGO legislation in Azerbaijan', 10 February 2014, and the report of [Amnesty International](#) 'Behind bars: Silencing dissent in Azerbaijan', 2014

¹⁹ Law on "State Registration and State Register of Legal Entities" of 2003, Law on Non-governmental organizations (public unions and funds) of 2009, Law on Grants of 1998; Code of Administrative Offences of 2000.

the administrative burden of NGOs willing to register; it provides for disproportionate sanctions; it provides for the arbitrary and discriminatory treatment of critical human rights NGOs, including in relation to seeking state registration. Overall, the law and its application constitute an excessive interference with the right to freedom of association.

In conclusion: The punitive elements of existing NGO regulations in Azerbaijan, the recent amendments, and the imprisonment of human rights defenders are in violation of Azerbaijan's obligations under the Convention to respect freedom of association, and constitute systematic repression of the exercise of this right. Azerbaijan has a positive obligation to protect and ensure full exercise of freedom of association as well to avoid interfering with the right. It is therefore of the utmost importance that this issue is addressed through the prioritisation and enhanced supervision of the judgments in *Ramzanova and Others v Azerbaijan*; *Nasibova v Azerbaijan*; *Ismayilov v Azerbaijan*; *Aliyev and Others v Azerbaijan*; and *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*.

Signatories



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On behalf of:

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