

Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Azerbaijan

Fourth Edition July 2017

This publication is made possible by the support of the American people through the United States Agency for International Development (USAID). The contents are the sole responsibility of the International Center for Not-for-Profit Law (ICNL) and MG Consulting and do not necessarily reflect the views of USAID or the United States Government.

This fourth edition of this publication is made possible by the support of the American people through USAID's Legally Enabling Environment Project (LEEP) implemented by ICNL and MG Consulting LLC. Previous updates were introduced in 2014 under the USAID funded Building Local Capacity for Development program (BLCD). The original assessment was prepared in 2007 by ICNL under USAID's Civil Society Project.

Table of Contents

Introduction.....	6
1. Protection of Freedom of Association	8
Azerbaijani Law.....	8
1.1. Freedom of Association under Azerbaijan’s International Obligations and Constitution8	
1.2. Restrictions on Freedom of Association	9
1.3. Governmental Guarantees in Cases of Alleged Violations of Freedom of Association10	
1.4. NGOs without Legal Personality	10
Analysis.....	10
2. Legal Existence of NGOs	123
2.1. Registration (Incorporation) of NGOs.....	123
Azerbaijani Law.....	14
2.1.1. Rules for Registering (Establishing) an NGO.....	14
2.1.2. Territorial Status.....	15
2.1.3. Government Body in Charge of Registration.....	16
2.1.4. Time lines for Consideration of Registration.....	16
2.1.5. Registration of Amendments to Founding Documents and Re-Registration.....	17
2.1.6. Registration of Foreign NGOs	17
2.1.7. Branches and Representative Offices of NGOs	18
2.1.8. Reasons for Denial of Registration	19
2.1.9. Appeals Procedure.....	20
2.1.10. Reorganization	20
2.1.11. Public Registry	20
Analysis.....	20
2.2. Dissolution (Termination).....	28
Azerbaijani Law.....	
2.2.1. Voluntary Dissolution and Suspension of Activities	29
2.2.2. Involuntary Dissolution.....	30
Analysis.....	31
3. Structure and Internal Governance	32
3.1 Mandatory and Optional Provisions for Governing Documents.	
Azerbaijani Law.....	33

3.2 Internal Governing Structure.....	34
Azerbaijani Law.....	
3.2.1. Governing Bodies in Public Associations.....	35
3.2.2. Governing Bodies in Foundations.....	36
3.2.3 Governing Bodies in Representative Offices and Branches of Foreign NGOs.....	35
3.3. Distribution of Profits and Other Private Benefits.....	37
Azerbaijani Law.....	38
Analysis.....	39
3.4. Conflicts of Interest.....	40
Azerbaijani Law.....	40
Analysis.....	40
4. Activities of NGOs	41
4.1. General Legal Capacity.....	40
Azerbaijani Law.....	42
Analysis.....	42
4.2. Advocacy and Political Activities.....	43
Azerbaijani Law.....	44
Analysis.....	47
4.3. Economic Activities.....	Error! Bookmark not defined.
Azerbaijani Law.....	48
Analysis.....	48
5. Sustainability	50
Azerbaijani Law.....	51
5.1. Foreign Funding.....	51
Analysis.....	53
5.2. Government Funding	54
Azerbaijani Law.....	54
5.3. Tax Exemptions for NGOs and for their Donors.....	58
Azerbaijani Law.....	59
5.3.1. Income Tax for NGOs.....	60
Generally Exempt Types of Income.....	60
Taxation of Income from Entrepreneurial (Business) Activities	61
Availability of Exemptions for Passive (Investment) Income	61

5.3.2. Deduction of Charitable Contributions	63
5.3.3. VAT for NGOs and Donors	63
5.3.4. Social payments, Land and other Taxes Affecting NGOs.	64
Analysis.....	64
5.4. Volunteers	Error! Bookmark not defined.
Azerbaijani Law	66
Analysis.....	67
6. Government Oversight.....	68
6.1. Supervision	68
Azerbaijani Law	69
Analysis.....	71
6.2. Sanctions	74
Azerbaijani Law.....	75
Analysis.....	78
7. Transparency and Accountability	78
Azerbaijani Law.....	79
Analysis.....	80
List of Materials Used in the Assessment.....	77

INTRODUCTION

The purpose of this Assessment is to help familiarize interested persons with Azerbaijani legislation relating to non-governmental organizations (NGOs) and to compare this legislation with international law and best practices. We hope that this Assessment will provide the foundation for the development of future strategies for legal reforms in Azerbaijan. The current Assessment is the fourth edition of the Assessment prepared in 2007 and updated in 2009 and 2014.

Since the Assessment was last updated in 2014, Azerbaijani NGO legislation has undergone major changes, including changes relating to:

- grant making in Azerbaijan;
- donations in Azerbaijan;
- social services;
- registration procedure for establishing new NGOs;
- new obligations for NGOs (for example, pertaining to registration of service contracts);
- new powers of the government to exercise control over NGOs; and
- administrative and other penalties for NGOs for non-compliance with legal requirements.

This Assessment includes updates on the aforementioned legislative developments, as well as their practical implementation.

This Assessment focuses on the following seven areas of the legal framework for NGOs:

1. Protection of the Freedom of Association in Azerbaijan;
2. Legal Existence of NGOs;
3. Structure and Internal Governance;
4. Activities;
5. Financial Sustainability;
6. Government Oversight; and
7. Transparency and Accountability.

We are aware that a broader set of issues has an impact on civil society, including an independent judiciary system, corruption, mass media, access to information about the government's work, and citizen participation mechanisms in government decision-making processes. Each of these issues affects not only NGOs but the society as a whole, and requires its own analysis. Therefore, we do not address them in this Assessment. This Assessment focuses on the areas of legislation which have specific implications for NGOs.

Each section in this Assessment begins with a statement on international best practices for the relevant topic. The best practice statements are based on the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as

“ECHR”);¹ the Council of Europe Recommendation on the Legal Status of Non-governmental Organizations in Europe (hereinafter referred to as “the CoE Recommendation”);² relevant case law of the European Court of Human Rights (hereinafter referred to as “ECtHR”);³ and Joint Guidelines on Freedom of Association (hereinafter referred to as “Guidelines”).⁴ Each international best practice statement is followed by a brief overview of the Azerbaijani legislation addressing the relevant issue, as well as a comparative analysis of the Azerbaijani legislation and corresponding international best practice.

The main body of this Assessment addresses issues relating to all NGOs. The Azerbaijani Law on Non-governmental Organizations (Public Associations and Foundations)⁵ (hereinafter referred to as “NGO Law”) regulates the establishment, activities of, and other relationships involving public associations and foundations. Therefore, for the purposes of this Assessment, “NGOs” are understood as public associations and foundations. Article 2 of the NGO Law defines “a public association” as “a voluntary, self-governed non-governmental organization, established by the initiative of a number of physical and/or legal persons, joined on the basis of common interests with purposes, defined in its constituent documents, without mainly aiming at gaining profits and distributing them between its members.” A foundation is defined as “a non-governmental organization without members, established by one or a number of physical and/or legal persons based on property contribution, and aiming at social, charitable, cultural, educational or other public interest work.”

In addition to associations and foundations, the Civil Code⁶ recognizes a third legal form of non-commercial entity: a union of legal entities. Both commercial and non-commercial entities may set up a union of legal entities to coordinate their activities, as well as to represent and protect their interests. The Civil Code allows legal entities (except for bodies of state power and local governments) to be founders of unions of legal entities. The procedure of registration of unions of legal entities is regulated under the Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities⁷ (hereinafter referred to as the “Registration Law”), and there are only minor peculiarities in regulation of this legal

¹ The European Convention on Human Rights (adopted by the Council of Europe in Rome November 4, 1950) and its Five Protocols (adopted in Paris March 20, 1952; Strasbourg May 6, 1963; Strasbourg May 6, 1963; Strasbourg September 16, 1963; and Strasbourg January 20, 1966), ratified by Azerbaijan on 15 April 2002.

² Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organizations in Europe, adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers’ Deputies.

³ *Ramazanov and Others v. Azerbaijan* (February 1, 2007) (application no. 44363/02), *Ismayilov v. Azerbaijan* (January 17, 2008) (application no. 4439/04), *Tebietli Mühafizə Cəmiyyəti and İsmayilov v. Azerbaijan*, (8 October 2009) (application no. 37083/03), *İslam-İttihad Association and Other v Azerbaijan* (13 February, 2015) (application no. 5548/05), etc, available at: www.echr.coe.int.

⁴ Joint Guidelines on Freedom of Association, OSCE, at <http://www.osce.org/odihr/132371>

⁵ The Law of the Republic of Azerbaijan on Non-governmental Organizations (Public Associations and Foundations), dd. June 13, 2000, with changes and amendments as of October 17, 2014.

⁶ Articles 117.1 and 117.2 of the Civil Code of the Republic of Azerbaijan of December 28, 1999 (hereinafter “Civil Code”).

⁷ The Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities, dd. December 12, 2004, with changes and amendments as of April 14, 2017.

form, compared to public associations. Therefore, we are not going to discuss peculiarities of regulating unions of legal entities separately in this Assessment.

Throughout the Assessment we usually refer to “NGOs,” since most provisions in the referenced Azerbaijani legislation affect both public associations and foundations. We only discuss “public associations” or “foundations” in those cases where a particular provision relates only to the identified legal organizational form.

This Assessment does not address the peculiarities of regulating political parties, labor unions, religious organizations, or other types of associations which are governed by special laws.

We rely in this Assessment on unofficial translations into English of Azerbaijani legislation and regret any technical imprecision resulting from deficiencies in this translation.

1. PROTECTION OF FREEDOM OF ASSOCIATION

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his or her interests. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.⁸

An association is an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. An association does not have to have legal personality, but does need some institutional form or structure.⁹ All persons, natural and legal, national and non-national and groups of such persons, shall be free to establish an association, with or without legal personality.¹⁰

The right to freedom of association is a right that has been recognized as capable of being enjoyed individually or by the association itself in the performance of activities and in pursuit of the common interests of its founders and members.¹¹

Associations have the freedom to determine the scope of their operations, meaning that they can determine whether or not they wish to operate locally, regionally, nationally or internationally.¹²

⁸ Article 11 of the ECHR.

⁹ Section 7, Guidelines.

¹⁰ Section 28, Guidelines.

¹¹ Section 16, Guidelines.

Associations shall themselves enjoy other human rights, including the right to freedom of peaceful assembly, the right to an effective remedy, the right to a fair trial, the right to the protection of their property, private life and correspondence and the right to be protected from discrimination.¹³

The interpretation and application of provisions concerning associations, including those that serve to restrict their operations, should be open to review by a court or other independent and impartial body.¹⁴

AZERBAIJANI LAW

1.1. FREEDOM OF ASSOCIATION UNDER AZERBAIJAN'S INTERNATIONAL OBLIGATIONS AND CONSTITUTION

As a UN member state,¹⁵ Azerbaijan undertakes obligations stemming from the Universal Declaration of Human Rights.¹⁶ Azerbaijan is a party to the International Covenant on Civil and Political Rights (hereinafter referred to as “ICCPR”)¹⁷ and to the ECHR, including its five protocols, subjecting Azerbaijan to the competence of the ECtHR.

Article 58 of the Constitution of Azerbaijan¹⁸ states that:

- I. Everyone is free to associate with other people.
- II. Everyone has the right to establish any union, including a political party, trade union and other public organization or to enter existing organizations. Unrestricted activity of all unions is ensured.
- III. Nobody may be forced to join any union or remain its member.

The Azerbaijani Constitution guarantees those same rights to all individuals, citizens and non-citizens.¹⁹

1.2. RESTRICTIONS ON FREEDOM OF ASSOCIATION

¹² Section 29, Guidelines.

¹³ Section 19, Guidelines.

¹⁴ Section 25, Guidelines.

¹⁵ See Decision of the Supreme Council of the Republic of Azerbaijan, 29 October 1991, No. 227-XII "On applying to the United Nations Organization".

¹⁶ Universal Declaration of Human Rights, U.N.G.A. Res. 217 (December 10, 1948).

¹⁷ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (December 16, 1966, entered into force March 23, 1976); See Decision of the Milli Majlis of the Republic of Azerbaijan No. 227, from 22 July 1992, "On Joining the International Covenant on Civic and Political Rights."

¹⁸ Constitution of the Republic of Azerbaijan (1995) with modifications introduced as a result of a Referendum held on 24 August 2002 and 26 September 2016 (hereinafter referred to as “the Constitution”).

¹⁹ Articles 25 and 26 of the Constitution.

According to the Constitution, the only restrictions on the freedom of association apply to “activity of unions intended to bring about the forcible overthrow of legal state power over the whole territory of the Republic of Azerbaijan or a part thereof” and “Activities of unions which violate the Constitution and laws may be stopped by court order.”²⁰ Article 71.2 of the Constitution provides additional grounds for restricting fundamental rights, including freedom of association. According to the Article 71.2 of the Constitution “Everyone’s rights and freedoms are restricted on the grounds provided for in the present Constitution and laws, as well as by the rights and freedoms of others.”

The Constitution provides that rights of foreign citizens and persons without citizenship, both permanent and temporary residents, can be restricted only by international law or by national laws.²¹ In accordance with the NGO Law, only foreigners and stateless persons who permanently reside in the Republic of Azerbaijan can be founders or legal representatives (i.e., directors) of an NGO established in Azerbaijan.²² In addition, the NGO law provides that NGOs that have foreign citizens, stateless persons and foreign legal entities as their founders as well as branches and representative offices of foreign NGOs have to have deputies who are citizens of the Republic of Azerbaijan.²³

The Registration Law provides an exclusive list of reasons for denial of registration of a legal entity, including NGOs. The list includes the following: when another organization was previously registered under the same name; when documents submitted for registration of an NGO contradict the Constitution, the Registration Law, or other Azerbaijani laws; when information in the application and/or documents attached to it are false, when the goals, purposes and forms of activities of the NGO contradict legislation; when the charter of an NGO provides for usurpation of powers of state and local self-governance bodies as well as functions of state control and inspection; or when an NGO does not correct all the deficiencies in its submitted registration documents within 20 days after the Ministry of Justice (MoJ) returns them.²⁴ While this list is exclusive, it is used with broad discretion by government officials considering documents for registration. This has caused undue denials of registration of NGOs in the past. (*See infra*, Section 2.1, “Registration (Incorporation) of NGOs.”)

Activities of NGOs may only be involuntarily terminated by court order if an NGO receives two warnings from MoJ within a year requesting it to correct or stop activities that violate the law.²⁵

Disputes between NGOs and their members are to be solved in court. If a court decides that the NGO violates the rights of its member, the NGO’s activities can be suspended for up to

²⁰ Article 58 of the Constitution.

²¹ Article 69 of the Constitution

²² Article 9.1-1 of the NGO Law.

²³ Article 7.5 of the NGO law.

²⁴ Article 11.3 of the Registration Law.

²⁵ Article 31 of the NGO Law.

one year.²⁶ (Other grounds for suspension of NGOs' activities are described in section 2.2.2 of the Assessment.)

Azerbaijan's Administrative²⁷ and Criminal Codes²⁸ contain provisions that establish penalties for violation of legal requirements relating to operation of an NGO (i.e., when it fails to register a grant or a donation). The Administrative Code also establishes a penalty for foreign NGOs that operate without state registration.²⁹ (See details on penalties under Section 6.2 of this Assessment.)

1.3. GOVERNMENTAL GUARANTEES IN CASES OF ALLEGED VIOLATIONS OF FREEDOM OF ASSOCIATION

Azerbaijani laws provide recourse to individuals who contend that their right to associate has been violated. The Constitution guarantees the right of citizens of Azerbaijan to appeal personally and also to submit individual and collective written appeals to State bodies. Each appeal should be responded to in an established format and timeframe.³⁰ It is significant that Azerbaijani citizens have the right to criticize the work of State bodies, political parties, trade unions, and other public organizations, and also individuals who work for those entities.³¹ Interestingly, foreigners and stateless persons are not explicitly guaranteed the rights to appeal or to criticize the actions of State bodies.

Article 154 of the Criminal Code establishes criminal liability for those who infringe upon the equality of citizens on the basis of race, nationality, or membership in a political party, trade union, or other public associations, with resulting harm to the rights and legitimate interests of citizens. This crime is punished by a monetary penalty or corrective work. However, if this crime is committed by a public servant in his official capacity, then along with the aforementioned sanctions there is also a punishment of imprisonment and a three-year ban on holding certain positions.

1.4. NGOS WITHOUT LEGAL PERSONALITY

Azerbaijani legislation allows for the establishment and existence of informal associations.³² It is important to note that the legal capacity of informal associations is different from the legal capacity of registered NGOs. Informal associations do not have the status of legal entities, and therefore, they cannot be plaintiffs or defendants in litigation, own property, open a bank account in the association's own name, or receive a tax identification number.

²⁶ Article 10.5 of the NGO Law.

²⁷ Code of Administrative Offenses of the Republic of Azerbaijan (December 29, 2015) (hereinafter referred to as the "Administrative Code").

²⁸ Criminal Code of the Republic of Azerbaijan (December 30, 1999) (hereinafter referred to as the "Criminal Code").

²⁹ Article 582 of the Administrative Code.

³⁰ Articles 57 and 65 of the Constitution.

³¹ Article 57 (II) of the Constitution.

³² Article 15 of the NGO Law.

The liability of such association's founders and members is not limited and it is not separate from the liability of the association. An informal association may use a name, but that name is not protected unless it is patented by a founder or a member. Informal associations, as such, are not subject to tax rules, including tax benefits, because only legal entities and natural persons are legally recognized as taxpayers.

According to the 2015 Civil Society Organization Sustainability Index Report,³³ there were about 1,000 informal NGOs in Azerbaijan. Unfortunately, more recent statistics are not available.

Azerbaijani legislation does not permit unregistered foreign NGOs. Per changes that entered into force in February 2014, the Administrative Code provides a penalty for foreign NGOs that operate without state registration.³⁴

ANALYSIS

The Azerbaijani Constitution's provisions on the freedom of association are *prima facie* in compliance with international law and meet international standards of best practice. The restrictions placed in the Constitution related to the freedom of association are limited and legitimate.

Article 71 of the Constitution allows the restriction of fundamental rights as based on laws and potentially provides a broad base for restrictions as compared to permitted restrictions under the ECHR. Fortunately, the Constitutional Court of the Republic of Azerbaijan has interpreted provisions in Article 71 in the past and held that fundamental rights may only be restricted by law and must be proportionate to the aim pursued and take into account the extent and duration of the restriction.³⁵ In the decision on *Ramazanova* case (which involved protracted and unlawful refusal by the MoJ to register an NGO), the Constitutional Court held that restrictions to the freedom of association must be in accordance with the requirements of the Constitutional Law "on providing for the implementation of human rights and freedoms in the Republic of Azerbaijan." In particular, restrictions to freedom of association must be "in the interests of national security, for the protection of health and morals, protection of the rights of others, prevention of crime and disorder, and protection of public security."³⁶

³³ The 2015 CSO Sustainability Index Report for Central and Eastern Europe and Eurasia, developed by United States Agency for International Development, Bureau for Europe and Eurasia, Democracy and Governance Division, available at: https://www.usaid.gov/sites/default/files/documents/1861/Europe_Eurasia_CSOSIRReport_2015_Update8-29-16.pdf (hereinafter referred to as the "2015 CSO Sustainability Index Report").

³⁴ Article 582 of the Administrative Code.

³⁵ See Decision of the Constitutional Court of the Republic of Azerbaijan from 15 April 2011 (on interpretation of the law "on psychiatric assistance"), available at www.constcourt.gov.az/decisions/197.

³⁶ See Decision of the Constitutional Court of the Republic of Azerbaijan from 11 May 2004 (on consideration of individual complaint of E. Alizada and others), available at www.constcourt.gov.az/decisions/81.

On November 13, 2014, the European Court of Human Rights ruled in *Islam-Ittihad Association and others v Azerbaijan* (No. 5548/05) that the dissolution by the State of the Islam-Ittihad Association violated the right to freedom of association under Article 11 of the ECHR. The Court ruled that although three warnings were issued by the MoJ to the Association ahead of its dissolution to cease its "religious activities", no clear definition was provided either in the warning or in the domestic law to explain what these activities were. The Court also stated that it was "struck by the fact that the domestic courts, instead of giving an interpretation of the term 'religious activity [...], imposed the burden of proof on the Association, holding that it had failed to submit any reliable evidence proving that it had not engaged in any such activity."³⁷

It is also important to note that guaranteeing the right to found an association only to those foreign citizens and persons without citizenship who permanently reside in Azerbaijan is a violation of international law. Under ECHR Article 1, Azerbaijan and all contracting parties have the obligation to secure the rights protected by the Convention to "everyone within their jurisdiction." The right to associate, including the right to found or become a member of an association, as well as the right to free expression, is protected by the ECHR, and as a result must be made available to all within the jurisdiction of the member states.

Under the accepted interpretation, the concept of jurisdiction cannot be arbitrarily limited to "legally domiciled" persons. As initially proposed, ECHR Article 1 provided that the rights of the Convention would be afforded to "all persons residing within their territories." This language was eliminated due to concerns expressed by the drafting committee that it might be interpreted in a manner that was too restrictive³⁸ and changed to the language that appears now. According to the ECtHR, the benefits of the Convention were intended to extend to "all persons in the territories of the signatory States, even those who could not be considered as residing there in the legal sense of the word."³⁹

According to the European Court of Human Rights' interpretation of "within their jurisdiction," the protections of the Convention must at a minimum apply to all those in the territory of the contracting country, whether or not they are legally domiciled there. Azerbaijan's limitation of founding rights to those who permanently reside in Azerbaijan is therefore inconsistent with the Convention. To bar a foreigner from establishing or participating in an NGO is a clear infringement of Articles 10 and 11 of the ECHR. As the government has the burden under the ECHR to justify any restriction, the Azerbaijan Government, if challenged, must demonstrate why restrictions on foreign founders are "necessary in a democratic society" to achieve particular state interests.⁴⁰ Here, it is far from clear what state interest is served by the bar on certain foreign founders, members, and participants, and how the bar can be justified as necessary in a democratic society.

³⁷ See <http://www.icnl.org/research/monitor/azerbaijan.html>

³⁸ See *Collected Edition of the Travaux Préparatoires of the European Convention on Human Rights*, Vol. III, p. 260.

³⁹ See *Bankovic v. Belgium*, (2001) 11 BHRC 435, para. 19/21.

⁴⁰ See ECHR Article 11; *Sidiroupoulos v. Greece*, 4 Eur. Ct. H.R. 500 (1998).

Moreover, there seems to be a gap between the content of the Constitution and the laws and their implementation. For example, while the list of reasons for denial of registration is exclusive, it is used with broad discretion by government officials considering documents for registration, and some NGOs face difficulties in obtaining registration. (See *infra* Section 2 on “Registration (Incorporation) of NGOs.”)

While many countries provide grounds for denial of NGO registration that are similar to Azerbaijan’s,⁴¹ registration of an NGO in the majority of European countries remains a mere formality. The rare NGO registration denial reflects European country officials’ very limited discretion in interpreting permissible reasons for denial.⁴² Similarly, while Azerbaijan is in compliance with good international practices in allowing persons to appeal denial of registration to courts, the perceived lack of independence of the courts from the executive branch has resulted in very few instances of appeals, and even fewer cases when the NGOs’ founders’ rights were restored.⁴³ Consequently, in practice, the value of the right to appeal to courts in order to guarantee the freedom of association may be more illusion than reality.

It is important to recognize that Azerbaijani legislation does not formally restrict the ability to establish and operate informal NGOs. This is consistent with the practices of all Western European countries. At the same time, Azerbaijan does not provide foreigners and stateless persons with the same rights as citizens to form and participate in (manage) NGOs. Many foreign laws give citizens and non-citizens the same rights with regard to the ability to form an association; this is the case in all Western European countries and most countries of Central and Eastern Europe, for example in Albania, Bulgaria, Hungary, Lithuania, and Romania.

2. LEGAL EXISTENCE OF NGOS

2.1. REGISTRATION (INCORPORATION) OF NGOS.

All persons, natural and legal, national and non-national, and groups of such persons, shall be free to establish an association, with or without legal personality.⁴⁴

An agreement between two or more persons or groups of persons should ordinarily be a sufficient basis for the establishment of an association. In case legislation requires that a greater number of persons are required in order to establish an association, the number concerned should be neither excessive nor incompatible with the nature of the association.⁴⁵

⁴¹ See *Comparative Study of the Concept of a Draft Law Suggesting New Restrictions as a Ground for Denial of Registration of NCOs*, Fabrice Suplisson, ICNL (December 19, 2006).

⁴² See *Denial of Registration and Involuntary Liquidation of Associations: Overview of French Case Law*, Fabrice Suplisson, ICNL.

⁴³ See *Report 2012 Nations in Transition: Azerbaijan*, Freedom House.

⁴⁴ Section 76, Guidelines.

⁴⁵ Section 148, Guidelines.

Legislation must recognize both informal and formal associations or, at a minimum, permit the former to operate without this being considered unlawful.⁴⁶

An association that obtains legal personality thereby acquires legal rights and duties, including the capacity to enter into contracts and to litigate and be litigated against. Informal associations depend upon the legal personality of their members for any such actions required for the pursuit of their objectives.⁴⁷

Legislation should make the process of notification or registration as simple as possible and, in any case, not more cumbersome than the process created for other entities, such as businesses.⁴⁸

Regulatory authorities shall also ensure that the public has relevant information as to their procedures and functioning, which shall be easy to understand and comply with.⁴⁹

An association does not have to have legal personality, but does need some institutional form or structure.⁵⁰

The interpretation and application of provisions concerning associations, including those that serve to restrict their operations, should be open to review by a court or other independent and impartial body.⁵¹

The list of documents required for registration should be clearly defined in legislation, and should be minimal and exhaustive. In general, evidence of a founding meeting, a charter or statute and the payment of registration fees (as applicable), as well as relevant details relating to the association's founders, should be sufficient. The state should generally not require the submission of unnecessary documents, such as lists of members, lease agreements, fiscal records of founders and other irrelevant documentation. However, special documentation requirements may exist for certain associations, such as political parties, which may be eligible to obtain public funding once established. Similarly, regulations may also reasonably require that public benefit organizations or charities fulfil additional requirements for the purpose of obtaining the special status enjoyed by such entities. However, actions undertaken to meet these requirements should be separate from the process of acquiring legal personality.⁵²

Any fees charged in the process should take into account the desirability of encouraging the formation of associations and their not-for-profit character. They should not, therefore, be set at a level that discourages or makes applications for registration impractical.⁵³

If the registration authorities are authorized to reject the application, then a clear legal basis should be provided in the legislation, with an explicit and limited number of justifiable grounds compatible with international human rights standards.⁵⁴

⁴⁶ Section 48, Guidelines.

⁴⁷ Section 50, Guidelines.

⁴⁸ Section 156, Guidelines.

⁴⁹ Section 33, Guidelines.

⁵⁰ Section 7, Guidelines.

⁵¹ Section 25, Guidelines.

⁵² Section 157, Guidelines.

⁵³ Section 156, Guidelines.

⁵⁴ Section 154, Guidelines.

Applications for registration should be determined without undue delay and should be dealt with within a matter of weeks.⁵⁵

The responsible state agency should be required to provide a detailed written statement of reasons for a decision to refuse the registration of an association. Such reasons should not go beyond what is specified in the applicable law.⁵⁶

Associations should have the opportunity to appeal decisions denying their application for registration or any failure to deal with their applications within a reasonable time, and should be able to do so before an independent and impartial tribunal. Persons whose applications to register were unsuccessful owing to a failure to comply with the respective formalities should have the right to reapply to for the registration of their associations.⁵⁷

Finally, re-registration should not automatically be required following changes to legislation on associations. Renewals of registration may be required in exceptional cases where significant and fundamental changes are to take effect.⁵⁸

Associations should not be required to obtain any authorization from a public authority in order to change their internal management structure, the frequency of meetings, their daily operations or rules, or to establish branches that do not have distinct legal personality.⁵⁹

The existence of an association may be terminated by decision of its members or by way of a court decision.⁶⁰

In the particular case of non-governmental organizations, the Council of Europe Recommendation on the legal status of non-governmental organizations in Europe stipulates that associations may only be dissolved in cases of bankruptcy, prolonged inactivity or serious misconduct.⁶¹

AZERBAIJANI LAW

2.1.1. RULES FOR REGISTERING (ESTABLISHING) AN NGO

The Registration Law and the NGO Law are the primary laws regulating registration procedures for NGOs. Once a group decides to form a public association, it has 30 days to officially notify the MoJ. Such a notification is not yet a registration. Prior to registration, a public association may engage in limited activities without the benefit of any special civil rights or duties, which are attributed to a legal entity. On the day that the MoJ receives notice of establishment of a public association, it shall provide written acknowledgment of that

⁵⁵ Section 161, Guidelines.

⁵⁶ Section 162, Guidelines.

⁵⁷ Section 163, Guidelines.

⁵⁸ Section 165, Guidelines.

⁵⁹ Section 175, Guidelines.

⁶⁰ Section 242, Guidelines.

⁶¹ Section 245, Guidelines; and Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, 10 October 2007, para. 44.

notice. An application for registration of a public association or a foundation must include a cover letter, organizational charter, power of attorney, notification of legal address, copy of an ownership certificate of the property where the legal address will be located, minutes of the first general meeting, and information on the founders including their names, addresses, passport numbers, and telephone numbers.⁶² Foreign citizens or legal persons, persons without citizenship, or Azerbaijani citizens or legal persons may be founders, members, or participants of public associations and founders and supporters of foundations.⁶³ However, only foreigners and stateless persons who have a right to permanent residence in the Republic of Azerbaijan can be founders and legal representatives⁶⁴ of an NGO in Azerbaijan.⁶⁵ An NGO shall receive legal entity status only after it receives state registration. The NGO Law requires at least two founders for a public association and one for a foundation.

In accordance with Article 12.1-1 of the NGO Law,⁶⁶ the minimum initial capital for the establishment of a foundation is 10,000 manat (approximately \$5,880).

The state fee of 11 manat (\$6.40) must be paid at the time of registration of a public association. For registration of a foundation, a minimum deposit of 10,000 manat must be paid as initial capital; this sum can be withdrawn if the MoJ does not register the foundation.

NGO registration applicants are subject to a penalty for providing false information during the registration process. The penalty is fixed at 4,000 manat (approximately \$2,350). The law does not define the term "false information."⁶⁷

2.1.2. TERRITORIAL STATUS

NGOs may be established and operate with all-Azerbaijan, regional, or local status. The area of operations shall be independently determined by the NGO. Operations of all-Azerbaijan NGOs shall apply to the whole territory of Azerbaijan. Operations of regional NGOs shall cover two or more administrative-territorial units of the country. Local NGOs shall operate within one administrative-territorial unit. International NGOs are public associations that have areas of operations covering the entire territory of Azerbaijan and at least one foreign state.

Provisions of the NGO Law on all-Azerbaijan, regional, and local NGOs are merely declared in documentation submitted for registration and have limited practical impact on the registration or activities of NGOs. We are not aware of any instances when the MoJ has audited activities of a registered NGO to determine its compliance with the territorial status indicated in its charter.

⁶² See ICNL's Guide on Registration of NGOs in Azerbaijan, Baku, 2011.

⁶³ Articles 8-10 of the NGO Law.

⁶⁴ The law does not define the term "legal representative" but in practice it refers to directors of branches or representations of a foreign NGO.

⁶⁵ Article 9.1-1 of the NGO Law.

⁶⁶ This change was introduced to the NGO Law on June 30, 2009.

⁶⁷ See Article 403 of the Administrative Code, 2016.

2.1.3. GOVERNMENT BODY IN CHARGE OF REGISTRATION

The Registration Law provides that registration is carried out by the relevant office of the executive branch. Registration of NGOs is vested with the MoJ pursuant to the relevant decree of the President,⁶⁸ whereas responsibility for the registration of commercial legal entities lies with the Ministry of Taxes (a single-window registration system is applied since January 1, 2008).

Initially, only the Head Office for Registration and Notarization within the MoJ registered NGOs.⁶⁹ In January 2012, the President introduced amendments to the registration process by a decree that authorized regional departments of the MoJ to deal with registration of non-commercial entities.⁷⁰ By a decision in March 19, 2012, the MoJ revised the rules on registration accordingly and permitted regional departments of the MoJ (in total 84, including the head office in Baku) to register NGOs.⁷¹ These new provisions started to be implemented in 2015. On May 6, 2015 the Collegium of MoJ made changes to the Rules on State Registration of Non-commercial Entities and Educational Institutions, which entered into force on May 13, 2015. According to the changes, the registration documents for local NGOs can now be submitted to a regional branch of the MoJ, which will send the documents to the relevant department in Baku within one day. When registration is complete, the original registration certificate can be handed over to the organization by the branch of the MoJ in their region. This change will save NGOs based outside of Baku time and resources which otherwise would be spent traveling to Baku because previously, only the main office of the MoJ in Baku dealt with NGO registration. No statistics are available with regard to registration of NGOs in the regions.

2.1.4. TIMELINES FOR CONSIDERATION OF REGISTRATION

The Registration Law establishes a timeframe for registration of NGOs of up to 40 working days.⁷² The Registration Law allows for the extension of the deadline for an additional 30 days in exceptional cases when the MoJ identifies the need for additional review of documents.⁷³ The Registration Law defines a two-day registration period for commercial entities.⁷⁴

The Registration Law provides that “if within the term established *under this article*, no refusal will be submitted on state registration, these structures shall be deemed as registered

⁶⁸ Article 2.1 of the decree of the President of the Republic of Azerbaijan “*on application of the law of the Republic of Azerbaijan "on state registration and state registry of legal persons"*” № 48 from April 12, 2004.

⁶⁹ The Decree of the President of the Republic of Azerbaijan on Development of Justice Organs (entered into force, August 18, 2006).

⁷⁰ Decree № 571 from 20 January 2012 (introducing amendments to various Presidential decrees).

⁷¹ See Decision № 2-N of the Collegium of the Ministry of Justice (March 19, 2012) “on adopting “rules of registration of non-commercial entities and educational institutions”, Annex 3.

⁷² Article 8 of the Registration Law.

⁷³ Article 8.2 of the Registration Law.

⁷⁴ Article 7-1 of the Registration Law.

by the State. In this case, the relevant executive authority of the Republic of Azerbaijan, no later than within 10 days, shall issue the certificate on state registration to the applicant.”⁷⁵ However, we are not aware of any instances when this provision has been applied in practice.

2.1.5. REGISTRATION OF AMENDMENTS TO FOUNDING DOCUMENTS AND RE-REGISTRATION

A legal entity (including an NGO), representative office or an affiliate of a foreign legal entity must register changes to its charter and other founding documents that are already registered with the MoJ.⁷⁶ To register a change, an NGO must file a written application with the MoJ, within 40 days from the moment the change is made. If the change is in compliance with the law, the MoJ shall register the change within 5 days.⁷⁷ The changes become effective from the moment they are registered.⁷⁸

2.1.6. REGISTRATION OF FOREIGN NGOS

There are two primary ways for a foreign organization to establish an NGO in Azerbaijan: (1) as a co-founder of an association or founder of a foundation; and (2) by opening a representative office or a branch of a foreign NGO, with or without humanitarian organization status.

The NGO Law stipulates that “state registration of branches and representative offices of foreign NGOs in the Republic of Azerbaijan shall be carried out on the basis of the agreement signed with such organizations.”⁷⁹ According to the Rules on Registration of Offices of Foreign NGOs,⁸⁰ foreign NGOs in their applications must indicate the purposes of their activities in Azerbaijan and justify the necessity of such activities, as well as the benefits of such activities to society in Azerbaijan (Section 2.2). In addition to the standard registration procedures described below, the NGO Law requires a foreign NGO and the MoJ⁸¹ to reach agreement in order for the foreign NGO to register an office in Azerbaijan. Changes made to the NGO Law that entered into force in February 2014 require the agreement between the MoJ and the foreign NGO to have an expiration date.⁸²

⁷⁵ Article 8.5 of the Registration Law.

⁷⁶ Article 14 of the NGO Law.

⁷⁷ Article 9 of the Registration Law.

⁷⁸ Article 14 of the NGO Law.

⁷⁹ Article 12.3 of the NGO Law.

⁸⁰ Rules On conducting negotiations for preparation and signing of an agreement for the state registration of branches or representations of foreign non-governmental organizations in the Republic of Azerbaijan, approved by the Decision № 43 of the Cabinet of Ministers of the Republic of Azerbaijan on 16 March 2011 (hereinafter referred to as “Rules for Registration of Offices of Foreign NGOs”).

⁸¹ Section 2.2 of the Decree of the President of the Republic of Azerbaijan On implementation of the Law of the Republic of Azerbaijan ‘On making changes and amendments to some legislative acts of the Republic of Azerbaijan’ dated August 27, 2009.

⁸² Article 12-3 of the NGO Law.

With regard to representative offices or affiliates of foreign NGOs, in general, the registration requirements are the same as for Azerbaijani NGOs, with additional requirement to submit the following documents: (1) the bylaws of the foreign NGO; (2) its certificate of incorporation; (3) documentation of its decision to set up an office in Azerbaijan; (4) power of attorney to a person representing the foreign NGO in Azerbaijan; (5) if the founder is a foreign or stateless person, a copy of his or her personal identification or other document verifying that he or she is a citizen of or a resident in any third country, and documentation confirming that this person may engage in business activities (usually from tax authorities); and (6) the agreement signed with such organizations. These documents must be certified at the Embassy of Azerbaijan or apostilled in the country of citizenship/residency.⁸³ Legal representatives of foreign NGOs operating in Azerbaijan need to have a permanent residence in Azerbaijan and a document attesting to this fact must be submitted to the MoJ as part of the registration package.⁸⁴ In accordance with the Migration Code of the Republic of Azerbaijan⁸⁵, permanent residence is issued only to foreigners and stateless persons who reside temporarily in Azerbaijan for no less than 2 years.⁸⁶ The application for permanent residence is considered within three months of submission.

Branches and representative offices of foreign NGOs must inform the MoJ about the term of the contract of their chief of party as well as his/her deputy, their names, citizenship, and place of residence.⁸⁷

Registration of international humanitarian organizations and other foreign organizations conducting charitable activities is also supposed to be carried out according to the requirements in the Decision of the Cabinet of Ministers of Azerbaijan on International Humanitarian Organizations and Their Representative Offices in Azerbaijan Republic #376, dated November 2, 1994. The Decision contains a blank reference to registration by the MoJ "in the manner determined by the law," based on the consent of the Cabinet of Ministers. It relieves such organizations from duties to the state, citing the humanitarian crisis at that time, and asks state agencies to assist them and provide all possible benefits to render humanitarian aid. As such, there is no special way to obtain this status.

2.1.7. BRANCHES AND REPRESENTATIVE OFFICES OF NGOS

Registered NGOs may establish branches and representative offices in Azerbaijan and abroad. A branch of an NGO may be established outside the place of location of the headquarters of the organization and may fully or partially carry out the same activities as the organization. A representative office of an NGO is organized outside of the location of the headquarters of the organization to represent its interests and to protect those interests.⁸⁸ Branches and

⁸³ Rule 2.3 of the "Rules for Registration of Offices of Foreign NGOs."

⁸⁴ Article 5.4.4-1 of the Registration Law.

⁸⁵ Migration Code of the Republic of Azerbaijan (Migration Code), adopted on July 2, 2013 and entered into force on August 1, 2013.

⁸⁶ Article 52.1 of the Migration Code.

⁸⁷ Article 14.2.4 of the Registration Law.

⁸⁸ Articles 7.2 and 7.3 of the NGO Law.

representative offices of NGOs are not legal entities (they are not required to register with the state), but they represent and protect the interests of the main organization and the organization shall inform MoJ about opening of a branch and (or) representation within ten days.⁸⁹

Branches and representative offices receive assets from the NGO that established them and operate in accordance with regulations approved by that NGO. The regulations of the branch or representative office of an NGO must include the name of the NGO that established it, information about state registration (the date of registration, registration number, legal address, and name of the government body that registered it), the legal address of the branch or representative office, the rules of governance, powers of the head of the branch or representative office, and the rules of dissolution.⁹⁰ Chief managers of branches and representative offices are appointed by the founding NGO and operate within the scope of powers given to them by the founding NGO. Deputies to managers of branches or representative offices of an NGO whose founders are foreign legal or natural persons, must be citizens of the Republic of Azerbaijan.⁹¹ Foreign NGOs can establish only one representative or branch office.⁹²

2.1.8. REASONS FOR DENIAL OF REGISTRATION

State registration of NGOs may be rejected only if: (1) there is another NGO registered under the same name; (2) the documents submitted for state registration are inconsistent with the Constitution, the Registration Law, or other laws of Azerbaijan, (3) the NGO's goals, duties or activities are inconsistent with Azerbaijani law, or (4) the registration documents contain false information. A decision to reject an NGO's application for state registration shall be submitted to a representative of that NGO in writing, identifying the reasons for rejection along with the specific law or laws with which the NGO failed to comply. Rejection of state registration of an NGO shall not be an obstacle for resubmission of documents after the deficiencies are addressed.⁹³

In practice, many groups applying for registration are denied such registration. In many instances, the shortcomings identified in letters of rejection could have been corrected during the process of the MoJ's consideration of the application and should not have been considered valid reasons for rejecting registration. In the *Ramazanov and Others v. Azerbaijan*⁹⁴ case, for example, the MoJ rejected the applicants' documents for reasons such as not including a provision on the territorial area of the association's activity.

⁸⁹ Article 7.1 of the NGO Law.

⁹⁰ Article 7.4-1 of the NGO Law.

⁹¹ Article 7.5 of the NGO Law.

⁹² Article 7.1-1 of the NGO Law

⁹³ Article 17.3 of the NGO Law.

⁹⁴ *Ramazanov and Others v. Azerbaijan*, Eur. Ct. H.R. (application no. 44363/02, February 1, 2007).

2.1.9. APPEALS PROCEDURE

In Azerbaijan, complaints regarding a decision to reject state registration of an NGO may be lodged in court.⁹⁵ The procedures for appealing to the courts are governed by the Administrative Procedure Code.⁹⁶

2.1.10. REORGANIZATION

NGO reorganization can be carried out in the form of a merger, division, separation, or transformation.⁹⁷ The procedure is not regulated in detail and the practical experience with reorganizing of NGOs is very limited in Azerbaijan. The management of an NGO prefers to dissolve such an NGO and have an initiative group establish a new one. We are not aware of new organization(s) registered as a result of re-organization.

A branch or representative office of a foreign NGO in the territory of the Republic of Azerbaijan is terminated if the foreign NGO merges with another organization, splits itself, or changes its organizational-legal form.⁹⁸

2.1.11. PUBLIC REGISTRY

The Registration Law requires the MoJ to maintain a State Registry that contains information about all legal entities in Azerbaijan as well as branch and representative offices of foreign legal entities.⁹⁹ The State Registry is updated based on uniform forms, methods, and principles.¹⁰⁰ It is maintained both in hard copy and electronically, and contains information about the formation, registration, reorganization, and dissolution of those entities. In addition, it contains information on amendments made to constituent documents and information about branches, representative offices and of the legal entities registered in Azerbaijan.¹⁰¹

The Registration Law explicitly grants public access to information in the State Registry as well as extracts and copies of documents submitted for registration. The MoJ is required to provide any interested party with information on whether or not an organization is registered.¹⁰² The Law also requires that information on the registration of legal entities be published in the official state newspaper.¹⁰³

⁹⁵ Article 17.4 of the NGO Law.

⁹⁶ Administrative Procedure Code of the Republic of Azerbaijan (effective January 1, 2011).

⁹⁷ Article 19.2 of the NGO Law.

⁹⁸ Article 19.7 of the NGO Law.

⁹⁹ Article 15.1 of the Registration Law.

¹⁰⁰ *Id.*

¹⁰¹ Article 12.8 of the Registration Law.

¹⁰² Article 18.1 of the Registration Law.

¹⁰³ Article 18.2 of the Registration Law.

Notwithstanding these public access requirements, currently, this Registry is only easily available to the staff of the MoJ. Information about NGOs is available to the public only upon request by written application.

ANALYSIS

Rules for registering: The documents required to apply for registration are similar to those traditionally required for such process. The limited list of reasons for denial of registration, the ability of both legal and physical persons to set up an NGO and many other related rules in the laws are in compliance with good international practices addressing similar matters. However, certain registration rules, such as the registration terms, the requirement for NGOs to determine their territorial status in their bylaws, and restrictions on the rights of foreigners to be founders of NGOs, do not comply with good international practices and will be further considered below.

In addition, in reality, certain provisions of the law with regard to the registration procedure are not always properly implemented and/or subject to broad interpretation. For example, the MoJ occasionally misses the timelines for decision making in regards to registration of an NGO. An important ECtHR case, *Ramazanov and Others v. Azerbaijan*, concerned a complaint submitted by four Azerbaijanis whose requests to register an association were repeatedly deemed technically insufficient for varying reasons and the decision on registration was delayed beyond the time frames established in the Registration Law. Multiple appeals to Azerbaijani courts were unsuccessful.¹⁰⁴ In this case, the ECtHR considered that the MoJ *de facto* refused to register the association based on its repeated failures to issue a definitive decision on the complainants' registration application.¹⁰⁵ A similar position was expressed by the ECtHR in *Ismayilov v. Azerbaijan*.¹⁰⁶

In May 2005, the Organization for Security and Cooperation in Europe (OSCE) issued a report on NGO registration in Azerbaijan, identifying problems and offering recommendations.¹⁰⁷ Similar to the opinions issued in *Ramazanov and Others v. Azerbaijan* and *Ismayilov v. Azerbaijan*, OSCE concluded that the government procedurally evaded NGO registration by taking an excessive amount of time to discover shortcomings, unduly prolonging processing times for NGO registration applications. While the report acknowledged that many of the shortcomings in applications cited by authorities were valid, most of them were correctable during the registration process and should not have been grounds for final rejection.

¹⁰⁴ *Ramazanov and Others v. Azerbaijan*, see *supra* note 68.

¹⁰⁵ *Id.* at paragraph 58.

¹⁰⁶ See *Ismayilov v. Azerbaijan*, 17 January 2008, Application no. 4439/04, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-84461>.

¹⁰⁷ Anar Kazimov and Hafiz Hasanov, *Report on the Registration Procedures of Non-Governmental Organizations*, available at: www.osce.org/baku/14613.

The 2015 CSO Sustainability Index Report documents that this practice continues: “The registration of CSOs in Azerbaijan has been a key problem in the legal environment for the last fifteen years. CSOs claim that the MoJ uses administrative impediments to delay registration for months, if not years. After each round of review, the MoJ often imposes new, extralegal requirements, some of which can be very difficult to fulfill. For example, the MoJ often requires a letter of recommendation from a relevant state agency, despite the fact that state agencies generally will not provide letters of recommendations to unregistered organizations.”¹⁰⁸

The U.S. State Department’s Country Reports on Human Rights Practices 2016 notes: “Although the law requires the government to act on NGO registration applications within 30 days of receipt (or within an additional 30 days, if further investigation is required), vague, onerous, and nontransparent registration procedures continued to result in long delays that limited citizens’ right to associate.” The report indicates that the MoJ reported registering 99 NGOs in 2016.¹⁰⁹

As the ECtHR concluded in *Ramazanova and Others v. Azerbaijan*, these failures of Azerbaijani government authorities to implement the law restrict freedom of association by preventing NGOs from gaining legal entity status, and thus violate the spirit and provisions of the ECHR.¹¹⁰

Territorial status: It is not clear why the government requires NGOs applying for registration to define their territory of operations. There is no such requirement for commercial entities, which, once registered, are not bound by any geographical limitations. There is no trace of such segmentation of an NGO’s zone of activity in Western European countries. Some countries, like Spain and Italy, establish a different role in the registration process for the registering agency’s central office depending on whether the geographical scope of an NGO’s activities is inter-provincial (Italy) or whether the budget of the organization exceeds certain limits (Spain). However, no Western European countries, even those with a federal structure like Germany, require NGOs to specify at registration whether it will have a local, regional, or national area of operations. Classification of NGOs based on the territory of operation should not impose limitations on the geographical scope on NGO’s activities.

Registration body: 2015 changes allowing NGOs to get registered not only with the central office of the MoJ, but also with its regional departments, are commendable. However, it is not clear how these are being implemented and whether they improved implementation practices, as there is no official statistics on how many NGOs were registered by regional departments of MoJ.¹¹¹

¹⁰⁸ The 2015 CSO Sustainability Index Report, pp. 34, available at: https://www.usaid.gov/sites/default/files/documents/1861/Europe_Eurasia_CSOSIRreport_2015_Update8-29-16.pdf.

¹⁰⁹ Country Reports on Human Rights Practices 2016, U.S. State Department, Bureau of Democracy, Human Rights, and Labor (2016), available at: <https://www.state.gov/documents/organization/265608.pdf>

¹¹⁰ See *Ramazanova and Others v. Azerbaijan*, at paragraph 66.

¹¹¹ Decree № 571 from 20 January 2012 (introducing amendments to various Presidential decrees).

Timeline for consideration of registration: The process for registering an NGO in Azerbaijan (up to 40 days) is substantially longer than that for a commercial entity (two days or one day for electronic registration).¹¹² The difference in processing registration of commercial and non-commercial legal entities raises questions as there is no legal rationale to justify it. The registration of NGOs and commercial entities are both regulated under a single Registration Law and the application for registration of both types of entities comprises the same documents under Article 5 of that Law. Why then, should more time be needed to carry out the registration of an NGO than a commercial entity?

The Registration Law provides that “in the event if within the term established *under this article*, no refusal will be submitted on state registration, these structures shall be deemed as registered by the State. At that the relevant executive authority of the Republic of Azerbaijan no later than within 10 days shall issue the certificate on state registration to the applicant” is in line with international good practices. As far as the authors of this Assessment are aware, it is not being implemented.

The legal provision allowing the MoJ to prolong the periods for consideration of documents for up to 30 days, as well as the fact that such delays are implemented “without showing any grounds”¹¹³ is contrary to good international practices. However, the MoJ does not comply even with these excessive terms (40 days with the possibility for extension for additional 30 days). In the *Ramazanov and Others v. Azerbaijan* case, the applicants had to submit and re-submit their NGO registration application five times, with almost four years between the first and the last registration requests. In its decision, the Court observed, “[T]here was no basis in the domestic law for such significant delays. The Government’s argument that the delays were caused by the Ministry’s heavy workload cannot extenuate the undisputable fact that, by delaying the examination of the registration requests for unreasonably long periods, the Ministry breached the procedural requirements of the domestic law. It is the duty of the Contracting State to organize its domestic state-registration system and take necessary remedial measures so as to allow the relevant authorities to comply with the time-limits imposed by its own law....”¹¹⁴ The Court also criticized the law for failing to protect the applicants from these arbitrary actions by the MoJ, concluding that under these circumstances, the MoJ’s interference with the rights of the applicants to associate was not “prescribed by law,” as required by Article 11 of the European Convention.¹¹⁵ A similar position was expressed in *Ismayilov v. Azerbaijan*.¹¹⁶

Moreover, good NGO registration practice call for little administrative discretion, so that any extension of the registration timeline should not be required and should therefore not be

¹¹² Article 7-1 of the Registration Law.

¹¹³ Anar Kazimov and Hafiz Hasanov, *Report on the Registration Procedures of Non-Governmental Organizations*, available at www.osce.org/baku/14613.

¹¹⁴ *Ramazanov and Others v. Azerbaijan* at paragraph 65.

¹¹⁵ *Id.*, at paragraphs 66-67.

¹¹⁶ *Ismayilov v. Azerbaijan* at paragraphs 52-54.

allowed. For example, under French law, the local administration is compelled to acknowledge receipt of a registration filing within five days unless the documentation is incomplete.¹¹⁷ Only one court decision was identified in which acknowledgement of receipt was appropriately denied because information required by law – the profession of one of the NGO’s officers – was missing. In addition, the French Constitutional Council in 1971 held that because the freedom of association is guaranteed by the constitution, the registration process cannot be an authorization process.¹¹⁸ Consequently, in France, the registration body does not have the legal power to deny registration when an application is formally complete, and assessment of the lawfulness of an NGO’s purpose is left to the interpretation of the courts. Such a mechanical approach to NGO registration prevails in Western Europe and should be implemented in Azerbaijan as well.

Registration of amendments to founding documents and re-registration: First, it shall be noted that the NGO Law and the Registration Law do not refer to the same documents with regard to an NGO’s obligation to register changes. Under the NGO Law, only changes to the *charter* are to be registered, whereas the Registration Law requires the registration of amendments to the *founding documents* (i.e., documents that constitute the legal basis for the establishment and activities of a legal entity as defined in Article 2.0.6). According to Article 5.4.1 of the Registration Law, the founding documents include the charter, the decision to establish the NGO, and decision on approving its charter. Documentation of the decision to establish an NGO may include information such as the name of the legal representative and his/her responsibilities, when the representative was appointed, and other issues considered relevant by the founders. In order to avoid any confusion for the executive body in charge of registration or the NGOs, it would be better for both laws to refer to identical documents. Legal representatives of branches and representative offices of foreign NGOs operating in Azerbaijan need to submit a document proving their permanent residence in Azerbaijan to the MoJ, and report on any changes in regard to such document.¹¹⁹

Second, the current requirement that “any amendments to founding documents” or “changes to the charter” be registered is too broad in light of the general principles in international law protecting freedom of association. Minor changes in the charter should not require such registration. The CoE Recommendation suggests that registration of changes only be required where an organization’s name or objectives are affected.¹²⁰ Renewals of registration may be required in exceptional cases where significant and fundamental changes are to take effect.¹²¹ Many European countries require registration of changes only for a closed list of situations. For example under French Association Law, only the following changes listed in the law must be registered: a change of directors and officers, creation of a new branch, a change of

¹¹⁷ Article 5 of the Law on Associations (July 1, 1901).

¹¹⁸ Decision n° 71-44 DC (July 16, 1971).

¹¹⁹ Article 5.4.4-1 of the Registration Law.

¹²⁰ Section 43 of the CoE Recommendation.

¹²¹ Article 165 of the OSI Guidelines.

legal address,¹²² and the acquisition or sale of buildings.¹²³ In Slovakia, associations are allowed to simply notify the registration authority in writing of any changes to their statutory documents within 15 days.¹²⁴ Most importantly, as with the initial registration of any NGO, the process should involve minimal bureaucracy and discretion.

Registration of foreign NGOs: The Rules for Registration of Offices of Foreign NGOs lack a clear procedure which would identify the basis for denial of registration, appeals procedure, or any timelines for decision making. The Azerbaijani requirement to negotiate and sign with the MoJ an agreement for opening of a branch or a representative office of a foreign NGO is unclear and raises a number of questions. The Law does not state, for instance, how “benefit for Azerbaijani society” must be measured or what is meant under “respect national-moral values of the Azerbaijani people.” Furthermore, the requirement that a foreign NGO must “justify the necessity of its activities in the Republic of Azerbaijan and its contribution to the society of Azerbaijan”¹²⁵ is arbitrary, because there is no test for “necessity.”

These requirements are highly unusual in international practice. They potentially allow for restriction of the freedom of association and subsidiary rights, as well as for unlimited governmental discretion, which might result in rising government corruption and harassment of foreign NGOs. The uncertainty about whether a foreign NGO might be able to legally operate in Azerbaijan could have a chilling effect on the activities of foreign NGOs, including humanitarian NGOs, resulting in reduction of assistance in vital social areas, such as poverty reduction or refugee assistance.

Arguably, the content of such requirements, as well as the fact that such requirements imposing restrictions on freedom of association are formulated not by laws, but by implementing regulations, are contrary to the ECHR. According to the practice of the ECtHR, the “prescribed by law” requirement of the limitations to the ECHR (“quality of law”) requires that laws restricting freedom of association are formulated with sufficient precision and provide minimum procedural guarantees.

The Rules for Registration of Offices of Foreign NGOs continue the previously existing practice of *ad hoc* registration of foreign NGOs. According to some foreign NGOs that have tried to register in Azerbaijan, the current registration process is long and the results are unpredictable.

¹²² According to local legal experts, the detailed address does not have to be stated in the charter. The statement of the city or even the administrative territory is valid. Therefore if the organization’s address changes within the city or territory, no registration is needed.

¹²³ Article 3 of the Decree of August 16, 1901 (amended April 24, 1981), available at:

http://abo.refasso.com/refassogb/Dev2Go.web?Anchor=Textes_de_loi_decret16&rnd=292.

¹²⁴ Article 11 of the Law of Slovakia Concerning the Right of Association, (March 27, 1990).

¹²⁵ Article 2.2 of the “Rules for negotiating agreements for state registration of branches or representations of non-governmental organizations of foreign states in the Republic of Azerbaijan” (adopted by Decision number 43 of the Cabinet of Ministers of the Republic of Azerbaijan, from March 16, 2011).

On 23 January 2013, the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution that calls on the Azerbaijani authorities to “improve and facilitate the registration procedures for international NGOs.”¹²⁶

Branches and representative offices of NGOs: Azerbaijani law seems to meet the international standards of best practice on this issue, with regard to local NGOs.

Reasons for denial of registration: The implementation of provisions relating to denial of registration of NGOs are of special concern. The reasons listed in the Azerbaijani NGO Law are broad, but similar to laws in many European countries. However, unlike other countries where such reasons are applied very rarely, in Azerbaijan it is a common practice to deny registration based on vague interpretations of the reasons listed in the law. In many instances, shortcomings in the documents submitted for registration and listed in the rejection letter could have been corrected during the MoJ’s consideration of the applications and should not have been considered valid reasons for rejecting registration.¹²⁷

In the *Ramazanov and Others v. Azerbaijan* case, the MoJ repeatedly, and after long delays, returned application documents for ever-changing technical corrections. Under those circumstances, the ECtHR explained: “Although the return of documents for rectification of deficiencies may not be regarded as a formal and final refusal to register the association under the domestic law, the Court ... considers that the repeated failures by the MoJ to issue a definitive decision on state registration of the association amounted to *de facto* refusals to register the association.”¹²⁸

The right to form an NGO to pursue common goals has been recognized under international law as well as the laws of many countries as protected by the right to free association.¹²⁹ This right may not be limited except where prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. Only “convincing and compelling” reasons can justify restrictions on the right to associate and restrictions must be “construed strictly.”¹³⁰

The ECtHR has specifically addressed the application of grounds to deny registration in Greece, and in that case found that they were not “necessary in a democratic society.” In *Sidiropoulos v. Greece*, a Greek court denied the registration of an association on the grounds that its purpose was not, as claimed, the promotion of local culture, but rather, “the promotion of the idea that there is a Macedonian minority in Greece, which is contrary to the country’s

¹²⁶ Resolution 1917 (2013) of the Parliamentary Assembly of Council of Europe on “The honouring of obligations and commitments by Azerbaijan,” available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19451>.

¹²⁷ Anar Kazimov and Hafiz Hasanov, *Report on the Registration Procedures of Non-Governmental Organizations*, *supra* foot note 79.

¹²⁸ *Ramazanov and Others v. Azerbaijan* at paragraph 58.

¹²⁹ See *Sidiropoulos and Others v. Greece*, 4 Eur. Ct. H.R. 500 (1998).

¹³⁰ See *id.*; see *United Communist Party v. Turkey*, 4 Eur. Ct. H.R. 1 (1998).

national interest and consequently contrary to law.”¹³¹ The Greek government asserted that denial of registration was necessary to uphold “Greece’s cultural traditions and historical and cultural symbols.” The Court found that this rationale did not constitute a legitimate state aim which could be used to restrict the right to associate under Article 11, noting that “[e]xceptions to freedom of association must be narrowly interpreted, such that the enumeration of them is strictly exhaustive and the definition of them necessarily restrictive.”¹³² The Court went on to consider whether denial of registration was necessary to protect one of the state aims enumerated in Article 11 – the protection of national security and prevention of disorder. It found:

Territorial integrity, national security and public order were not threatened by the activities of an association whose aim was to promote a region’s culture, even supposing that it also aimed partly to promote the culture of a minority; the existence of minorities and different cultures in a country was a historical fact that a “democratic society” had to tolerate and even protect and support according to the principles of international law.¹³³

The Court accordingly found that denial of the association’s registration violated Article 11 of the ECHR.

Despite the fairly clear interpretation by the ECtHR of permissible reasons for denial of registration and the almost identical restatement of those reasons in the NGO Law, Azerbaijani civil society is justifiably concerned due to the practical exercise of broad discretion on the part of government officials implementing the Law. As was found in the *Ramazanova and Others v. Azerbaijan* case, the officials’ broad interpretation of the grounds for limiting freedom of association, resulting in denials of registration of NGOs, may violate Azerbaijani obligations under Article 11 of the ECHR. Azerbaijan’s record of implementing the NGO and Registration Laws must be taken into consideration in evaluating whether Azerbaijan complies with international law and best practices for regulating NGOs, even if certain provisions of the laws are similar to the provisions of other countries, especially those countries considered “old democracies.”¹³⁴

Appeals procedure: Azerbaijan’s Administrative Procedure Code allows for court appeals of denied NGO registration applications. However, the lack of independence of the Azerbaijani courts is illustrated in the *Ramazanova and Others v. Azerbaijan* opinion. Furthermore as reported by the Monitoring Committee of Parliamentary Assembly of Council of Europe in 2008:

¹³¹ *Sidiropoulos and Others v. Greece* at 10.

¹³² *Id.* at 37, 40.

¹³³ *Id.* at 41.

¹³⁴ Denial of Registration and Involuntary Liquidation of Associations: Overview of French Case Law, Fabrice Suplisson, ICNL.

Judicial corruption and lack of independence of the judiciary remain serious problems in Azerbaijan and we welcome the open and constructive attitude of the Azerbaijani authorities who are fully aware of the need to further reform and train the judiciary, effectively eradicate corruption among judges and improve the negative image of justice in the country.¹³⁵

Similar to Azerbaijani legislation, which allows for appeals of decisions on denial of registration of an NGO, most legal systems provide for review of adverse registration decisions, either directly in the legislation governing NGOs or as part of their general rules for appeal of judicial or administrative acts.¹³⁶ Most systems provide for appeal to a court. For example, Croatia and Bosnia provide for special administrative proceedings in administrative courts. Romanian law not only allows NGOs to appeal adverse decisions, it also allows the public prosecutor or the activity-area ministry to appeal decisions in the NGO's favor. In order to comply with the best practice, however, it is important that the appeals process to courts actually functions in practice.

Due to the lack of public information on the numbers of NGOs which were denied registration and/or which appealed registration denials to courts, we are unable to state affirmatively how frequently this practice occurs and whether any NGOs have been successful in such appeals.

Public registry: Public access to information about NGOs continues to be an issue in Azerbaijan. Despite having features similar to those of many other countries, the public registry does not properly serve its ultimate purpose, which is to provide public information on registered NGOs in Azerbaijan.

2.2. DISSOLUTION (TERMINATION).

The existence of an association may be terminated by decision of its members or by way of a court decision.¹³⁷ Where the termination is voluntary, it should be initiated by the association itself, for example, in accordance with its founding instrument or by decisions of its members.¹³⁸ Voluntary termination of an association may occur when the association has met its goals and objectives, or, for example, when it wishes to merge with another association or no longer wishes to operate.¹³⁹ The association's freedom to determine who should succeed to its assets is only subject to the prohibition on distributing profits that it may have made among its founders and members.¹⁴⁰

¹³⁵ The functioning of democratic institutions in Azerbaijan, Doc. 11627, 6 June 2008, Report, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), available at <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileId=12114&Language=en>

¹³⁶ Serbia is the only example in Central and Eastern Europe of a country which does not preserve a right of appeal for foundations.

¹³⁷ Section 242, Guidelines.

¹³⁸ Section 258, Guidelines.

¹³⁹ Section 243, Guidelines.

¹⁴⁰ Section 258, Guidelines.

Legislation should clearly state what happens to the assets and property of associations where their termination is involuntary. Where involuntary termination is based on the non-compliance of the association's objectives or activities with international standards or with legislation that is consistent with such standards, the legislation may provide that the funds or assets concerned should pass to the state. In other cases, providing for an automatic transfer may be considered disproportionate.¹⁴¹

Furthermore, the individual wrongdoing of founders or members of an association, when not acting on behalf of the association, should lead only to their personal liability for such acts, and not to the prohibition or dissolution of the whole association.¹⁴²

Although a less intrusive sanction than termination, any suspension of the activities of an association can still only be justified by the threat that the association in question poses to democracy, and should also only be based on a court order or be preceded by judicial review. A suspension should always be a temporary measure that does not have a long and lasting effect. A lengthy suspension of activities would otherwise effectively lead to a freezing of the operations of an association, resulting in a sanction tantamount to dissolution. It is also essential that any decision leading to the suspension, prohibition, or dissolution of an association be communicated in a timely manner and be subject to review by an independent and impartial tribunal.¹⁴³

AZERBAIJANI LAW

2.2.1. VOLUNTARY DISSOLUTION AND SUSPENSION OF ACTIVITIES

In Azerbaijan, the NGO Law provides for both voluntary and involuntary termination. NGOs are considered terminated by reorganization (amalgamation, merger, division, separation, or transformation) or dissolution.¹⁴⁴ Both reorganization and dissolution of public associations are carried out pursuant to a decision by the association's highest governing structure, the general meeting.¹⁴⁵ Foundations, which are not membership based organizations and do not hold general meetings, can be dissolved by a decision of the board of trustees.¹⁴⁶ According to the Civil Code, the decision to dissolve a foundation should be made by the courts based on the application of an interested party (i.e., a board of trustees or a registration body).¹⁴⁷ Therefore, the decision of a board of trustees to dissolve a foundation would require a court's formal approval in order to be carried out.

Dissolution of NGOs is governed by the Registration Law and the Civil Code. Legal entities, and representative offices or branch offices of foreign legal entities, submit an application

¹⁴¹ Section 257, Guidelines.

¹⁴² Section 254, Guidelines.

¹⁴³ Section 255-256, Guidelines.

¹⁴⁴ Article 18 of the NGO Law.

¹⁴⁵ Article 25.5.6 of the NGO Law.

¹⁴⁶ Article 27.2 of the NGO Law.

¹⁴⁷ Article 116.2 of the Civil Code.

with attached documents required by law to the MoJ (or its regional branches)¹⁴⁸ for exclusion from the registry.¹⁴⁹ Within seven days of complete submission of the documents necessary for dissolution, the MoJ (or its regional branch) will officially exclude the organization from the registry.¹⁵⁰

Azerbaijani law provides managers of NGOs with broad discretion in regards to implementation of the dissolution procedure of NGOs. The final disposition of the NGO's property is mostly left to the initiative of the liquidator (or liquidation commission), who are required to address the issue in the charter under Article 13 of the NGO Law and must comply with the related provisions of the Civil Code. The requirements of the Civil Code itself are limited as well, offering two alternatives for disposing the property of the dissolved association or foundation. The first option is that the property be directed to the goals stipulated in the charter, for example, transfers to another NGO with similar statutory purposes. Only in those cases where this first option is impossible, the property will be directed to the state budget.

Due to the December 17, 2013 changes, which entered into force in February 2014, NGOs may suspend both their tax ID and their registration.¹⁵¹ The tax ID can be suspended for a maximum period of five years with possibility of renewal, but the legislation does not stipulate a maximum period for suspension of the NGO's registration with the MoJ. This is an important option for NGOs that are temporarily inactive, as it will release them from reporting obligations. Some NGOs already benefited from this provision in practice.

2.2.2. INVOLUNTARY DISSOLUTION

Article 58 (IV) of the Azerbaijani Constitution provides, "The activities of associations which violate the Constitution and laws can be stopped solely by the court's order."

Where the MoJ determines an NGO has violated a provision of the NGO Law, it must formally notify the organization in writing, instructing it to correct the violations. The NGO may appeal the notification in court.¹⁵² If an NGO is cited more than twice in one year for violations, the MoJ may initiate an action in court for dissolution of the NGO.¹⁵³ We are aware of at least three instances of involuntary dissolution: *Tebieti Mühafizə Cəmiyyəti*,

¹⁴⁸ Note that while the law permits NGOs to process dissolutions through regional MoJ offices, in practice, as with NGO registration, such matters are mostly handled by the MoJ headquarters in Baku.

¹⁴⁹ Applications for liquidation must be accompanied by the following documentation: the official decision to liquidate, financial balance and tax returns, acceptance of which is verified by the relevant executive authority of Azerbaijan; results of the entity's last tax audit by the relevant executive authority of Azerbaijan; the original certificate of state registration and charter of the structure and its seal; and verification of publication in the media of a notice informing the public of the entity's intent to liquidate. Article 16 of the Registration Law.

¹⁵⁰ Article 16.5 of the Registration Law states, "In the event an application is incomplete, the Ministry of Justice shall provide written notification and the organization will amend or resubmit its application. Official exclusion from the registry will occur within 7 days of a complete application."

¹⁵¹ Article 16.4 of the NGO Law.

¹⁵² Article 31 of the NGO Law.

¹⁵³ Article 33 of the NGO Law.

Demokratik Fealiyyet Cemiyeti, and Election Monitoring Center. In all three cases, the dissolution was carried out by court following two or even more written warnings by the MoJ. The dissolution of *Tebieti Mühafize Cemiyeti* was considered by the ECtHR as violation of the NGO's freedom of association.¹⁵⁴ The dissolution of *Demokratik Fealiyyet Cemiyeti* was carried out at the initiative of the MoJ of the Nakhichevan Autonomous Republic of Azerbaijan. Election Monitoring Center's dissolution case is pending with the ECtHR. Official grounds for dissolution varied from case to case: internal management problems, inactivity, failure to report about change of legal address, etc.

Grounds for dissolution also exist in the Criminal Code.¹⁵⁵ According to chapter 15-2 of the Criminal Code, dissolution of a legal entity (dissolution is accompanied by 200,000 manat fine with certain exceptions) can be applied as a criminal penalty, in cases of criminal acts (some of which are listed below) which legal representatives (managers) of a legal entity have committed "in favor of a legal entity or in order to protect its interests." The list of crimes for which criminal responsibility of legal entities is applicable is rather broad and includes among others crimes such as treason, public incitements against the state, incitement of national, racial, social or religious hatred and enmity, revealing state secrets, corruption, organizing riots, and organization of actions promoting infringement of public order or active participation in such activities, as well as forcing someone to join or remain in a political party.¹⁵⁶

NGO Law also envisions a possibility for the MoJ to initiate suspension of an NGO's activities in court. Article 31.2 of the NGO Law envisages a 30 day period, starting from receipt of the warning or instruction for NGOs, to rectify deficiencies identified by MoJ.¹⁵⁷ If deficiencies are not rectified during the 30 days period, the court may suspend activities of an NGO upon the application from MoJ for a period of one year.

Article 31.3 of the NGO Law gives courts the following additional grounds to suspend an NGO's activity for a year:

- if the NGO creates obstacles for elimination of emergency situations;
- if the NGO was penalized for failure to rectify the deficiencies identified by the ministry and still did not rectify them; and
- if the NGO violates the rights of its members.¹⁵⁸

Disputes between NGOs and their members are to be solved in court; if a court decides that the NGO violated the rights of its member, the NGO's activities can be suspended for up to one year.¹⁵⁹

¹⁵⁴ *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, 8 October 2009, application no. 37083/03.

¹⁵⁵ Criminal Code of the Republic of Azerbaijan, 2000, chapter 15-2.

¹⁵⁶ See Article 99-4.6 of the Criminal Code.

¹⁵⁷ Article 31.2 of the NGO Law.

¹⁵⁸ Article 31.3 of the NGO Law.

¹⁵⁹ Article 10.5 of the NGO Law.

ANALYSIS

The broad discretion in regards to dissolution procedure and property disposal given by Azerbaijani law to founders and managing bodies of NGOs is similar to the approach which may be found in the NGO laws of other countries.

In Azerbaijan, the NGO Law also allows the MoJ to initiate the dissolution of an NGO when its actions “contradict the objective of the law.”¹⁶⁰ The NGO Law requires the MoJ to provide at least two warnings to the NGO prior to applying to court for the initiation of a dissolution procedure. However, the broadness and vagueness of the term, “contradict the objective of the law,” (instead of the narrow “provisions” of the law) would permit the state to restrict the freedom of association in violation of international law. Good implementation practice would restrict the government’s ability to initiate dissolution of an NGO to limited and clearly stated circumstances.

Two positive aspects of the Azerbaijani provisions on dissolution are the involvement of the courts in involuntary dissolution as well as the requirement of prior warnings to an NGO before a dissolution is sought in court. Nevertheless, in order to comply with international law and best practices, the Azerbaijani law should adopt a limited list of specific circumstances, in compliance with the ECHR provisions, under which involuntary dissolution may be sought in court. A similar approach was expressed by the ECtHR in the October 9, 2009, ruling on the case *Tebieti Mühafizə Cəmiyyəti and İsmayılov v. Azerbaijan*. In its ruling, the Court stated that the NGO Law had afforded the MoJ rather wide discretion to intervene in any matter related to an association’s existence.¹⁶¹ The Court further stated that:

[a] mere failure to respect certain legal requirements on internal management of non-governmental organizations cannot be considered such serious misconduct as to warrant outright dissolution. [...] The immediate and permanent dissolution of the Association constituted a drastic measure disproportionate to the legitimate aim pursued. Greater flexibility in choosing a more proportionate sanction could be achieved by introducing into the domestic law less radical alternative sanctions, such as a fine or withdrawal of tax benefits.¹⁶²

3. STRUCTURE AND INTERNAL GOVERNANCE

3.1 MANDATORY AND OPTIONAL PROVISIONS FOR GOVERNING DOCUMENTS.

¹⁶⁰ Article 31 of the NGO Law.

¹⁶¹ § 61-62 *Tebieti Mühafizə Cəmiyyəti and İsmayılov v. Azerbaijan*, 8 October 2009, application no. 37083/03.

¹⁶² *Ibid*, § 82.

Apart from the objectives and name of the association, in very limited circumstances, the substance of the documentation submitted to the authorities for registration should not be subject to review.¹⁶³

The law should refrain from restricting the use of names of associations, unless they impinge on the rights of others or are clearly misleading, such as when the name gives the impression of being an official body or of enjoying a special status under the law, or leads to the association being confused with another association. Legislation should also refrain from placing territorial restrictions on the operations of associations, and should maintain the same procedures for registration throughout the whole country.¹⁶⁴

Legislation that seeks to determine which objectives and activities can or cannot be included in the founding instrument of associations should be repealed.¹⁶⁵

Founders and members shall be free in the determination of the objectives and activities of their associations. This includes adopting their own constitutions and rules, determining their internal management structure and electing their boards and representatives.¹⁶⁶

AZERBAIJANI LAW

According to Article 13 of the NGO Law, the charter of an NGO shall define: (1) the name and address of the organization; (2) the objectives of operation and method of management; (3) the rights and responsibilities of members; (4) the conditions and rules for joining and leaving the membership of a public organization; (5) the sources of the NGO's assets; (6) the rules for adoption and amendment of the charter; and (7) the rules for dissolution of an NGO and for the utilization of its property in case of dissolution.

There are certain limitations on what NGOs can include in their charters. For instance, the charters of NGOs shall not provide for appropriation of powers of state and local self-governance bodies or functions of state control and inspection;¹⁶⁷ it is prohibited to use the titles of state bodies of the Republic of Azerbaijan as well as the names of prominent persons of Azerbaijan (without the consent of their close relatives or successors) in the titles of non-governmental organizations;¹⁶⁸ and the symbols of an organization shall not be identical to symbols of the Republic of Azerbaijan or foreign states, as well as symbols of state bodies, international organizations, and other institutions and they shall not imitate trademarks protected by the law.¹⁶⁹

¹⁶³ Section 158, Guidelines.

¹⁶⁴ Section 159, Guidelines.

¹⁶⁵ Section 181, Guidelines.

¹⁶⁶ Section 86, Guidelines.

¹⁶⁷ Article 13.3 of the NGO Law.

¹⁶⁸ Article 3.1 of the NGO Law.

¹⁶⁹ Article 3-1 of the NGO Law.

The charter of a foundation shall include the following information: (1) the entity's name with the word "Foundation" in it; (2) its address; (3) its objectives; (4) its bodies, including a Board of Trustees, as well as rules for establishment of those bodies; (5) the rules for appointment and dismissal of foundation officials; and (6) the future disposition of the foundation's property in case of dissolution.

In addition to these mandatory provisions and specific limitations, NGOs may include in their charters any other provisions not contrary to the laws of Azerbaijan. For example, an association may choose to have a director who runs day-to-day activities or a board of directors, or it may have both a director and a board of directors.¹⁷⁰ The NGO Law in this case allows the general meeting of the association to give the director and/or board the authority to run the NGO's day-to-day activities. The NGO Law only lists the attributes of the general meeting; it does not specify the powers of the other governing bodies for associations. Regarding foundations, the governing structure is more complicated and detailed. However, the NGO Law does not specify the procedures for appointment and dismissal of the governing bodies of a foundation.¹⁷¹ Moreover, the NGO Law allows the Board of Trustees of a foundation to adopt a decision on dissolution of the foundation,¹⁷² while the Civil Code provides that a foundation may be dissolved in courts only based on petitions of interested persons.¹⁷³

ANALYSIS

The Azerbaijani NGO Law imposes limited requirements on the overall content of an NGO's charter.¹⁷⁴ It is a good approach shared by most countries, as the internal organization of NGOs should be adaptable to a very large variety of situations and remain flexible. For example, under the German Civil Code, the charter of an association seeking registration must also provide a limited amount of information, including: the purpose of the organization and its the name, its legal address, the conditions required to acquire and lose membership status, the membership fees, information on the designation of the board of directors, the modalities under which the general assembly is gathered, and how its resolutions are approved. The charter must also state that the association is registered.¹⁷⁵

3.2 INTERNAL GOVERNING STRUCTURE.

Founders and members shall be free in the determination of the objectives and activities of their associations. This includes adopting their own constitutions and rules, determining their internal management structure and electing their boards and representatives.¹⁷⁶

¹⁷⁰ Article 26 of the NGO Law.

¹⁷¹ Article 27 of the NGO Law.

¹⁷² *Id.*

¹⁷³ Article 116 of the Civil Code.

¹⁷⁴ Article 13 of the NGO Law.

¹⁷⁵ Articles 57 and 58 of the German Civil Code.

¹⁷⁶ Section 86, Guidelines.

Public authorities should not interfere with an association's choice of its management or representatives, except where the persons concerned are disqualified from holding such positions by law, and this law is compliant with international standards. Those responsible for decision-making in a non-governmental organization can, however, be required by public authorities to be clearly identified.¹⁷⁷

Furthermore, associations should not be required to obtain any authorization from a public authority in order to change their internal management structure, the frequency of meetings, their daily operations or rules, or to establish branches that do not have distinct legal personality.¹⁷⁸

No one shall be compelled to belong to an association or be sanctioned for belonging or not belonging to an association. Associations shall be free to determine their rules for membership, subject only to the principle of non-discrimination.¹⁷⁹

Person must be free to leave an association and to cancel her or his membership thereof. Depending on the nature of the association, membership does not need to take a structured form.¹⁸⁰

Furthermore, any restrictions prohibiting public officials from serving on the highest governing body of an association should be consistent with the admissible restrictions on their ability to be members of such an association in general. Non-nationals should not be prevented from becoming involved in the management of associations simply on account of their nationality.¹⁸¹

AZERBAIJANI LAW

3.2.1. GOVERNING BODIES IN PUBLIC ASSOCIATIONS

The charter of a public association shall, in accordance with the NGO Law, define the structure and composition of that public association, the powers of its management bodies, rights and responsibilities of members of an NGO, rules for establishment of such bodies and their term in office, as well as rules on adoption of decrees and acting on behalf of the public association.¹⁸² The supreme management body of a public association shall be the general meeting, to be convened not less than once a year. The general meeting shall be convened by the executive body of a public association, by one of its founders, or by one-third of its members. The main function of the general meeting is to review the activities of the association.¹⁸³

¹⁷⁷ Section 174, Guidelines.

¹⁷⁸ Section 175, Guidelines.

¹⁷⁹ Section 28, Guidelines.

¹⁸⁰ Section 46, Guidelines.

¹⁸¹ Section 173, Guidelines.

¹⁸² Article 13 of the NGO law.

¹⁸³ Articles 25.3 and 25.4 of the NGO Law.

The exclusive powers of the general meeting include the following: (1) adoption of and amendments to the charter; (2) determination of principles for the formation and use of the association's property; (3) creation of executive bodies and the conditions for the premature termination of their powers; (4) adoption of an annual report; (5) participation in other associations; and (6) conditions for reorganization and dissolution. Founders and members of a public association shall receive information about the place and time of the general meeting at least two weeks in advance. The general meeting may make changes to the charter only if more than half of the members of a public association participate in the meeting. A decree of the general meeting shall be adopted by the majority of votes of the members participating in the meeting. Each member shall have one vote. Written minutes shall be kept of the general meeting, and shall be signed by the chairman and secretary of the general meeting. If necessary, the minutes of the meeting shall be distributed to all members.¹⁸⁴

The executive body of a public association may be collegial and/or single (often called "director" or "board of directors"). It shall exercise management of the operations of a public association and shall report to the general meeting of members. The executive body of a public association may establish branches and representative offices of that public association. The executive body of a public association shall deal with all of the issues that are not exclusively delegated to other bodies as determined by the NGO Law, other laws, or the charter of that public association.¹⁸⁵

Executive bodies of an NGO whose period of services has expired may not adopt any decisions or sign documents related to the organization's activities.¹⁸⁶

In accordance with Article 10.4 of the NGO Law, once the public association is registered with the state, within 30 days it must compile a registry of its members. The law does not envisage any format or structure for such a registry and leaves it for public associations to decide. Article 579 of the Administrative Code provides penalties for NGOs that fail to maintain a registry of members, among other requirements.¹⁸⁷

NGOs and branches and representative offices of foreign NGOs are required to inform the MoJ about the composition of their highest governing body and the term of service of members of the highest governing body.¹⁸⁸

3.2.2. GOVERNING BODIES IN FOUNDATIONS

Management of a foundation shall be carried out by the president of that foundation or its governing board, under the supervision of a Board of Trustees. The NGO Law defines the exclusive competence of the Board of Trustees as follows: supervise activities of the

¹⁸⁴ Article 25 of the NGO Law.

¹⁸⁵ Article 26 of the NGO Law.

¹⁸⁶ Article 26.4 of the NGO Law.

¹⁸⁷ Article 340-2 of the Administrative Code.

¹⁸⁸ Article 14.2.5 of the Registration Law.

foundation; supervise the adoption and implementation of decrees by other bodies of the foundation; supervise utilization of the foundation's resources; adopt changes to the foundation's charter; and adopt decrees on dissolution or reestablishment of the foundation. The members of the Board of Trustees shall implement their activities on a voluntary gratuitous basis. Rules for establishment and operations of the Board of Trustees of a foundation shall be determined in the charter of that foundation and approved by its founders.¹⁸⁹

It is important to note that there are few foundations in Azerbaijan, and we are not aware of any which operate endowments (i.e., generate investment income for the purpose of financing charitable activities).

3.2.3. GOVERNING BODIES IN REPRESENTATIVE OFFICES AND BRANCHES OF FOREIGN NGOS

The NGO Law provides that representative offices and branches of NGOs that have foreign citizens and foreign legal entities as their founders must have as deputies citizens of the Republic of Azerbaijan.¹⁹⁰ Foreign NGOs can establish only one representative office or branch in Azerbaijan.¹⁹¹

ANALYSIS

Article 25 of the NGO Law provides little room for organizational discretion regarding the meeting of the general assembly. Although none of the provisions of the Law divert from traditional practices of associations on those matters, some of the very practical aspects of the meeting and attributes of the general assembly could have been left to the initiative of each organization to be set forth in its charter. Such is the case regarding the general meeting convocation timeline and the rules establishing minimum thresholds for votes to establish or amend a charter. Nevertheless, these requirements, in general, fall within common practice, and therefore should not have a significant negative impact.

The NGO Law gives little guidance on the role and structure of the executive body of public organizations under Article 26 or foundations under Article 27. Flexibility regarding the organization of the internal bodies of an association is a positive thing.

3.3. DISTRIBUTION OF PROFITS AND OTHER PRIVATE BENEFITS

An association should be not-for-profit, meaning that the generation of income must not be its primary purpose. Further, an association must not distribute any profits that might arise

¹⁸⁹ Article 27 of the NGO Law.

¹⁹⁰ Article 7.5 of the NGO law (added by the law № 842-IIIQD from 30 June 2009).

¹⁹¹ Article 7.1-1 of the NGO Law.

from its activities among its members or founders, but should invest them in the association and use them for the pursuit of the association's objectives.¹⁹²

Associations should be able to protect all their property interests through legal proceedings. This is essential, since any seizure of, loss of control over or damage to their property could frustrate the pursuit of their objectives.¹⁹³

Associations that receive public support may be required to act on independent advice when selling or acquiring land or other major assets.¹⁹⁴

Associations should, however, be able to use their income and assets to pay their staff and to reimburse any expenses incurred on their behalf. It is, therefore, legitimate for associations to use their property and assets to pay their employees and to reimburse the expenses of those who act on their behalf.¹⁹⁵

Where involuntary termination is based on the non-compliance of the association's objectives or activities with international standards or with legislation that is consistent with such standards, the legislation may provide that the funds or assets concerned should pass to the state. In other cases, providing for an automatic transfer may be considered disproportionate. Where the termination is voluntary, it should be initiated by the association itself, for example, in accordance with its founding instrument or by decisions of its members. The association's freedom to determine who should succeed to its assets is only subject to the prohibition on distributing profits that it may have made among its founders and members.¹⁹⁶

AZERBAIJANI LAW

The only restriction on distribution of profits and other private benefits in the NGO Law is found in the definition of a public association, which is "not aimed at profits as a major objective and does not distribute generated profit among its members."¹⁹⁷

The Tax Code provides a definition of "a non-commercial activity," and of a "non-commercial organization." A non-commercial activity is defined as a "not-prohibited by law activity, which does not pursue the purpose of obtaining profit, and, in case of gaining profit, designates it only for non-commercial purposes, including for the organization's own charter purposes. Otherwise activity is considered commercial."¹⁹⁸

It is important to note that this non-distribution constraint is only stated in the Tax Code, and it is not addressed at all in the NGO Law. Therefore, it would be applicable to NGOs only for tax purposes but would not apply for good governance purposes.

¹⁹² Section 43, Guidelines.

¹⁹³ Section 196, Guidelines.

¹⁹⁴ Section 197, Guidelines.

¹⁹⁵ Section 194, Guidelines.

¹⁹⁶ Sections 257-258, Guidelines.

¹⁹⁷ Article 2 of the NGO Law.

¹⁹⁸ Article 13.2.27 of the Tax Code.

The law does not restrict NGOs' ability to pay their staff and also to reimburse all staff for reasonable expenses thereby incurred. The NGO Law does not address the related issue of compensation of the persons in charge of the administration and management of an NGO.

It should be noted that the law does not relieve NGO managers from personal responsibility for administrative offenses and even criminal liability committed in their official capacity. For example, the responsibility for receiving a donation in violation of the law entails a significant fine for NGO managers in amounts that can reach 5,000 manat (approximately \$2,940) which is separate from the fine on the NGO itself.¹⁹⁹ Furthermore, according to Chapter 15-2 of the Criminal Code, a measure of "special confiscation of property" that entails a "forced and uncompensated seizure" by state can be applied to individuals with regard to various property, including "cash or other property obtained through the crime" or "property or part thereof into which property obtained by criminal means is fully or partly transformed through conclusion of civil transactions or by other means."²⁰⁰ This is especially relevant once measures of criminal liability are applied to a legal entity. (See Section 6.2 of this Assessment for more information on sanctions.)

ANALYSIS

Azerbaijani law covers the basic aspects of the non-distribution constraint, (i.e., the prohibition of distribution of profits among founders and members of an NGO). It also addresses the extent to which an NGO may be involved in commercial activities (i.e., only if the profits generated are not distributed among members).

It is legal and consistent with Azerbaijani law to pay reasonable salaries and related employee benefits as well as reimbursement of expenses incurred on behalf of the NGO to the employees. The provisions that allow members of a foundation's custodial board to carry out their responsibilities on a voluntarily, free of charge basis are also in compliance with best practices as long as an NGO has the right to compensate reasonable expenses related to their responsibilities as board members.

The NGO Law generally complies with the good practices described above by leaving the issue of compensation to the discretion of NGOs themselves.

The issue of personal liability is another important issue with regard to protecting the interests of NGOs and preventing any self-dealing by the management of NGOs, and an area where the Azerbaijani laws could be improved. The officers and board members shall not be liable if they act reasonably and in good faith; however, they shall be liable to the organization and to third parties for willful or negligent performance or omission. Azerbaijani law is in general compliance with this practice. The same rules usually apply to officers of

¹⁹⁹ Article 432.3 of the Administrative Code.

²⁰⁰ Article 99-1 of the Criminal Code of the Republic of Azerbaijan.

businesses and NGOs, with the definitions of crimes and omissions provided in the Criminal Code and the Administrative Procedure Code.

3.4. CONFLICTS OF INTEREST

Individual members of an association could be required to disclose their membership where this could conflict with their responsibilities as employees or office-holders.²⁰¹

AZERBAIJANI LAW

On May 15, 2015, a new article regulating conflict of interest was added to the Civil Code of the Republic of Azerbaijan.²⁰² This article envisages the rules for legal entities (including NGOs) on concluding deeds with “relevant persons” (i.e., chairperson or board members of Board of Directors (Advisory Board) and executive bodies, heads of structural units (i.e., representations, branches, etc), and family members of the abovementioned persons), any person who has at least a 10% stake in the legal entity’s nominal capital, and persons who have at least 20% of entity’s shares.

Azerbaijani legislation does not require NGOs to enact internal governance mechanisms which reflect international best practices and prevent conflicts of interest. The majority of Azerbaijani NGOs do not employ internal conflict of interest policies.

ANALYSIS

Countries generally adopt one of two approaches regarding conflicts of interests. A global approach consists of a regulation preventing and sanctioning conflict of interest situations for all persons bearing fiduciary duties (officers, directors, managers, etc.) whether in the for-profit sector or the not-for-profit sector. Under this approach, it is left to the courts to determine on a case-by-case basis whether there has been a violation. Note that in civil code countries, the duties and responsibilities of fiduciaries are addressed through provisions regarding the contract of mandate. Similar provisions were introduced in the Azerbaijani Civil Code in 2015. An alternative approach consists of designing specific rules for NGOs, notably by requiring those organizations to adopt internal conflict of interest rules in light of their particular facts and circumstances.

International best practices vary depending on the local circumstances. It is fair to say, for example, that in the USA, regulation of conflict of interest has been triggered first in the context of large public companies and then adapted to the NGO sector. In France, attention to those issues was more specifically triggered by the practices of NGOs.

²⁰¹ Section 167 of the Guidelines.

²⁰² Law # 1283-IVQD, May 15, 2015.

Legislative reform in this area should be informed by the following basic principles, which are usually central to preventing and sanctioning conflicts of interest:

- Any individual, especially a director, officer, or manager of an NGO, who faces a conflict between his own interests and those of the organization he or she represents on a given issue, should recuse him or herself from any decision-making regarding that issue.
- Potential conflicts of interest should, at minimum, be disclosed.
- NGOs should have a procedure designed to deal with conflicts of interest.
- In those cases where an individual may have a conflict of interest in a particular transaction, the NGO should receive the benefit of the bargain.

4. ACTIVITIES OF NGOS

4.1. GENERAL LEGAL CAPACITY.

There shall be a presumption in favor of the lawfulness of the establishment of associations and of their objectives and activities, regardless of any formalities applicable for establishment.²⁰³

Associations shall also be free to be members of other associations, federations, and confederations, whether national or international.²⁰⁴

These goals and objectives must, however, comply with the requirements of a democratic society.²⁰⁵

In the case of associations that have legal personality, they should be able to manage and use their income and assets with the assistance of their own banking accounts. Access to banking facilities will be an essential factor for associations' ability to receive donations and to manage and protect their assets. This does not mean that banks should be placed under an obligation to grant such facilities to every association requesting them, but the banks' freedom to select clients should be subject to the principle of non-discrimination. The acquisition of legal personality may be a prerequisite for the association to operate bank accounts in its own name.²⁰⁶

Associations should be able to protect all their property interests through legal proceedings. This is essential, since any seizure of, loss of control over or damage to their property could frustrate the pursuit of their objectives.²⁰⁷

Associations that receive public support may be required to act on independent advice when selling or acquiring land or other major assets.²⁰⁸

²⁰³ Section 26, Guidelines.

²⁰⁴ Section 29, Guidelines.

²⁰⁵ Section 47, Guidelines.

²⁰⁶ Section 195, Guidelines.

²⁰⁷ Section 196, Guidelines.

²⁰⁸ Section 197, Guidelines.

Associations should, however, be able to use their income and assets to pay their staff and to reimburse any expenses incurred on their behalf. It is, therefore, legitimate for associations to use their property and assets to pay their employees and to reimburse the expenses of those who act on their behalf.²⁰⁹

Where involuntary termination is based on the non-compliance of the association's objectives or activities with international standards or with legislation that is consistent with such standards, the legislation may provide that the funds or assets concerned should pass to the state. In other cases, providing for an automatic transfer may be considered disproportionate. Where the termination is voluntary, it should be initiated by the association itself, for example, in accordance with its founding instrument or by decisions of its members. The association's freedom to determine who should succeed to its assets is only subject to the prohibition on distributing profits that it may have made among its founders and members.²¹⁰

AZERBAIJANI LAW

According to Azerbaijani law, NGOs registered as legal entities enjoy the same capacity as other legal entities. For example, as a legal entity, an NGO can be a plaintiff or defendant in court, and can possess property in its own name. NGOs obtain the rights and responsibilities of a legal entity from the date of their official registration and can carry out any activities not prohibited by the law or their charters.²¹¹

Azerbaijani NGOs have the same capacity as all other legal entities to found another legal entity, including a business, unilaterally or jointly with other entities and persons. The only limitation of an NGO's capacity as compared to other legal entities is that it can conduct entrepreneurial activity only as long as the activity promotes the NGO's statutory purposes.

Under Azerbaijani law, NGOs are permitted to engage in fundraising activities by telephone, mail, television, and similar campaigns. The law does not require any licenses or permits for these activities. There are no laws governing charity balls, auctions, or similar occasional activities. However, according to February 15, 2013, amendments to the Law on Grants,²¹² Law on NGOs,²¹³ and the Administrative Code,²¹⁴ the majority of NGOs are prohibited from receiving donations in cash. All donations have to be transferred to the bank account in the name of an NGO, with the exception of registered charities, which can also receive donations in cash up to 200 manat. Moreover, a donation from a foreign source must be registered with the MoJ. These restrictions limit NGOs ability to fundraise using traditional public fundraising techniques.

²⁰⁹ Section 194, Guidelines.

²¹⁰ Sections 257-258, Guidelines.

²¹¹ Article 22 of the NGO Law.

²¹² Law of the Republic of Azerbaijan № 560-IVQD "on amendments to the Law of the Republic of Azerbaijan on Grants" (15 February 2013).

²¹³ Law of the Republic of Azerbaijan № 561-IVQD "on amendments to the law of the Republic of Azerbaijan on Non-Governmental Organizations (public associations and foundations)" (15 February 2013).

²¹⁴ Law of the Republic of Azerbaijan № 563-IVQD "on amendments to the Code of Administrative Offenses of the Republic of Azerbaijan" from 15 February 2013, present Article 466 of the 2016 Administrative Code.

Theoretically, NGOs may take out loans, but in practice, NGOs do not borrow because they lack collateral.

Azerbaijani NGOs do not engage in lotteries because the Law of the Republic of Azerbaijan on Lotteries, dated May 2004 (hereinafter referred to as “the Law on Lotteries”), limits the permissibility of implementing lotteries to only those organizations designated by the President’s Commission on Securities. At present, all lotteries are conducted exclusively by the Open Stock Company Azerlottery.²¹⁵

Article 2(2) of the Bankruptcy Law is applicable to all commercial and non-commercial organizations (with exception of public legal entities).²¹⁶

ANALYSIS

The general legal capacity of an NGO in Azerbaijan is similar to that of NGOs in most countries of Western, Central, and Eastern Europe. It is legitimate to limit the conduct of entrepreneurial activities to the pursuit of the NGO’s statutory purpose.

It is commendable that Azerbaijani law does not prohibit NGOs to engage in fundraising activities. It is now necessary to create the required normative framework in order to promote efficient fundraising while still protecting the public from possible corruption. Licenses for lotteries are typically required because this activity is often subject to manipulation and fraud. However, there must be a reasonable balance between protecting the public and the tendency to create too many bureaucratic obstacles. Lotteries, charity balls, auctions, and other occasional activities undertaken for the purposes of fundraising should not be considered commercial activities.

It is contradictory to good international practices however, that Azerbaijani NGOs are prohibited from receiving cash donations. In most countries, NGOs are allowed to collect cash donations and to fundraise from the general public. It is also rather unusual to demand registration of a donation from a foreign source with the government.

Like commercial entities, NGOs may face financial difficulties that jeopardize the continuity of the organization. It is in compliance with good practice that the Azerbaijani Bankruptcy Law, applies to all commercial and non-commercial organizations (with exception of public legal entities).²¹⁷

4.2. ADVOCACY AND POLITICAL ACTIVITIES

²¹⁵ Article 3.3 of the Law on Lotteries.

²¹⁶ Law of the Republic of Azerbaijan on Insolvency and Bankruptcy (June 13, 1997, with subsequent amendments as of April 23, 2002) (Law on Bankruptcy).

²¹⁷ Law on Bankruptcy.

Associations should be free to pursue these goals and objectives without undue interference of the state or third parties. These goals and objectives must, however, comply with the requirements of a democratic society.²¹⁸

In practical terms, the exercise of freedom of expression and opinion also means that associations should be free to undertake research, education, and advocacy on issues of public debate, regardless of whether the position taken is in accordance with government policy or advocates a change to the law.²¹⁹

In a participatory democracy with an open and transparent lawmaking process, associations should be able to participate in the development of law and policy at all levels, whether local, national, regional, or international.²²⁰

This participation should be facilitated by the establishment of mechanisms that enable associations to engage in dialogue with, and to be consulted by, public authorities at various levels of government.²²¹

The participation of associations should involve a genuine two-way process and, in particular, proposals by associations for changes in policy and law should not be seen as inadmissible or unlawful.²²²

In addition, associations should be able to comment publicly on reports submitted by states to international supervisory bodies regarding the implementation of obligations under international law, and should be able to do so prior to the submission of such reports. Furthermore, associations should always be consulted about proposals to amend laws and other rules that concern their status, financing and operation.²²³

In order to be meaningful, consultations with associations should be inclusive, should reflect the variety of associations that exist, and should also involve those associations that may be critical of the government proposals being made.²²⁴

All consultations with associations should allow access to all relevant official information and sufficient time for a response, taking account of the need for the associations to first seek the views of their members and partners.²²⁵

AZERBAIJANI LAW

In general, Azerbaijani legislation does not limit NGO participation in framing and debating issues of public policy. However, Article 1(4) of the Law on Grants²²⁶ provides that financial support should not be considered a grant (which is tax exempt income for NGOs) if used for

²¹⁸ Section 47, Guidelines.

²¹⁹ Section 101, Guidelines.

²²⁰ Section 183, Guidelines.

²²¹ Section 184, Guidelines.

²²² Section 185, Guidelines.

²²³ Section 186, Guidelines.

²²⁴ Section 187, Guidelines.

²²⁵ Section 188, Guidelines.

²²⁶ The Law of the Republic of Azerbaijan on Grants (April 1998) (hereinafter referred to as the “Law on Grants”).

the following purposes: (1) pursuit of political power; (2) lobbying laws and other normative acts; (3) political advertising; or (4) financing of politician(s) or political party(s).

Until recently, Azerbaijani legislation lacked mechanisms for engaging the public and NGOs in the process of policy-making, and NGOs complained that they did not have access to government decision-makers. Even at the national level, NGOs are often not aware of key draft legislation until it is already adopted and published in an official media source. The Law on Obtaining Information requires public officials to release “draft legal acts as of the date of submission for review and adoption.”²²⁷ However, thus far, this Law has not been widely implemented.

NGOs enjoy limited access to officials at the local government level. The *rayons*, or local territorial entities, are governed by an *Excom* and *Baladiiya*. The *Excom* is the local executive authority, which is an organ of the Presidential apparatus. Chairmen of the *Excoms* are appointed by and solely responsible to the President. The *Baladiiya* is an elected municipal council. *Baladiiyas* were only established with elections in 1999 and are largely unpaid positions with relatively limited authority.²²⁸

Each *Excom* has a deputy for social and political affairs who oversees the activities of NGOs and political parties in the region. The deputies for social and political affairs generally see their main purpose relating to NGOs as ensuring that NGOs function according to their charter and do not engage in political activities.²²⁹ They do not look to NGOs for advice or information during the development or formation of policy.²³⁰ *Excom* officials generally view NGOs as not having sufficient capacity to carry out their missions. NGO leaders comment that *Excoms* generally ignore their advice and discriminate against those NGOs they perceive as not being pro-government.²³¹

Baladiiyas do not have staff designated to handle interactions or policies relating to NGOs. In some areas of Azerbaijan, *Baladiiyas* see NGOs as a resource to their community and a potential implementing partner.²³² Because they are elected and have less political power than the *Excoms*, there is the potential for closer cooperation on the part of the *Baladiiyas* with NGOs than seems to currently exist for the *Excoms*.

In October 2012, the Congress of Local and Regional Authorities of the Council of Europe adopted Resolution 345²³³ and Recommendation 326 (2012) titled “Local and regional democracy in Azerbaijan,”²³⁴ which criticize the state of affairs regarding local self-

²²⁷ Article 29.1.10 of the Law of the Republic of Azerbaijan on Obtaining Information (September 30, 2005) (hereinafter referred to as the “Information Law”).

²²⁸ For more information on the structure of local government see Jerome Gallagher and Vagif Hasanov, *Local Civic Engagement Assessment for Azerbaijan* (March 2006).

²²⁹ See *id.* at 15.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.* at 16.

²³³ Available here <https://wcd.coe.int/ViewDoc.jsp?id=1992611>

²³⁴ Available here <https://wcd.coe.int/ViewDoc.jsp?id=1992639>

government in Azerbaijan. Among other issues, the Congress noted “the insufficient and ambiguous definition of local-self-government,” “parallelism in the local self-governance system,” and “subordination, in practice, of municipalities to local executive committees,” as well as severe lack of financial and other material resources of municipalities. These factors make accountability of local government to local population and civil society illusory and the possibility of their provision of meaningful access to local resources improbable.

The Milli Majlis (the national parliament) of the Republic of Azerbaijan adopted the Law on Public Participation on November 22, 2013. The new law entered into force on June 1, 2014, and, if implemented properly, it will increase citizen participation in the legislative process and governance in Azerbaijan. In general, the Law on Public Participation provides the right of and mechanisms for the public to discuss and provide input on draft laws before their enactment and, importantly, provides consequences for violations of this right.

The Law on Public Participation requires amendments to several laws and new implementing regulations. An accompanying presidential decree assigns the responsibility for drafting these amendments and regulations to specific government bodies. The content of these additional amendments and implementing regulations will substantially impact how effective the new law will be in practice.

The Law on Public Participation provides citizens and civil society institutions with the right to participate in government decision-making. The law defines civil society institutions as “non-governmental organizations (public unions and foundations), mass media, trade unions, initiative groups of citizens, and mahalla committees of municipalities.” It appears that the term “citizens” applies only to citizens of Azerbaijan; therefore the Law’s provisions do not cover foreigners or stateless persons.

The law defines public participation as participation by citizens and civil society institutions in the government’s decision making by such means as:

- preparing and implementing state policy in different fields of state and social life;
- decision-making on a nationwide and local level;
- organizing public control over the activity of central and local executive authority and self-government bodies;
- consultation of state bodies with society;
- consideration of public opinion;
- studying public opinion;
- public discussion of draft legal acts; and
- written consultations.

Azerbaijani legislation permits NGOs to engage in political activities, within the limitations described below. Article 2.3 of the NGO Law simply provides, “An NGO may be established and operated for purposes that are not prohibited by the Constitution and laws of the Republic of Azerbaijan.” The only restriction established in the Constitution is in Article 58 (IV),

which states, “The activity of associations which pursue the aim of overthrowing the legitimate State power in the whole territory of the Republic of Azerbaijan or in any part of it shall be banned. The occupation of unions which violate the Constitution and laws can be stopped solely by specific court order.”

According to Article 2.4 of the NGO Law, “An NGO may not participate in presidential, parliamentary and municipal elections of the Republic of Azerbaijan, and it may not provide financial and other material assistance to political parties.” There is no definition of “participation in elections” under Azerbaijani law. These restrictions are meant to be applied to activities of NGOs as legal entities, but not to their individual employees or members. In practice, some members and leaders of NGOs have been criticized for supporting, serving, or lobbying for the interests of political parties, even though it is within their rights to do so (as long as they do not act in their capacity as representatives of their NGO).

Azerbaijani election law permits local NGOs that receive their funding from foreign entities to observe presidential elections and elections to the Milli Majilis and municipalities.²³⁵ Foreign NGOs used to have that right, but at present they can observe the elections only when invited by the Government.²³⁶ However, it is possible for foreign NGOs to hold exit-polls jointly with local NGOs.

ANALYSIS

Recent legislation extended the opportunities for NGOs to engage in advocacy and political activities. Nevertheless, the country would benefit from improving the cooperation and dialog between the state and local authorities and the NGO sector on public policy issues.

It appears legitimate for the NGO Law to prevent NGOs from providing financial and material support to political parties, providing that separate laws govern political parties, political fundraising, elections, and political campaigning. Examples of such restrictions can be found in countries including the USA and Poland.²³⁷ However, it is important to keep in mind that such restrictions usually do not apply to all NGOs (just to certain types). In France, for example, there are no restrictions on the ability of a large majority of French NGOs to be involved in political activities. Only associations and foundations seeking public interest recognition from the state (which carries substantial tax and other preferences) are restricted from such political involvement. In the USA, restrictions on the participation of NGOs in lobbying and political activities are simply a tax issue, as only organizations which are not involved in substantial lobbying and do not support political campaigning may benefit from the 501(c)(3) exempt status.

²³⁵ See *President of Azerbaijan Issues Executive Order on Elections*, ICNL (October. 25, 2005) available at: <http://www.icnl.org/knowledge/news/2005/10-25.htm>.

²³⁶ Article 44.1, Election Code of the Republic of Azerbaijan, 2003.

²³⁷ *Funding of Political Parties and Election Campaigns*, International Institute for Democracy and Electoral Assistance – IDEA Handbook Series 71-75 (2003).

The new Law on Citizen Participation provides an excellent foundation for major improvements in the area of citizen participation.

4.3. ECONOMIC ACTIVITIES

Associations should, thus, be free to engage in any lawful economic, business, or commercial activities in order to support their not-for-profit activities, without any special authorization being required, while at the same time being subject to any licensing or regulatory requirements generally applicable to the activities concerned.²³⁸

AZERBAIJANI LAW

Azerbaijani NGOs may carry out entrepreneurial activities that are consistent with and “aimed at reaching objectives of the creation” of the organization, so long as income generated is not distributed among the founders or members.²³⁹ The production and sale of goods for profit, the acquisition of securities, and property and non-property rights, as well as participating in businesses, are all permitted activities for NGOs as long as they advance the organization’s objectives. An NGO shall keep records of its income and expenditures related to its entrepreneurial activities. Restrictions on the types of activities an NGO can conduct may be determined only by law.

Income from entrepreneurial activities, whether conducted by NGOs or businesses (enterprises), in Azerbaijan is taxable.

Certain entrepreneurial activities are subject to licensing requirements whether performed by NGOs or other entities,²⁴⁰ but only a few activities subject to licensing are likely to be relevant to NGOs (e.g., medical activities). Most types of activities can be conducted without any license, however, and we are not aware of any instances of NGOs applying for such licenses.

ANALYSIS

It can be inferred from Article 22 of the NGO Law that only “related” entrepreneurial activities may be carried out by NGOs, as the activities must be “aimed at reaching objectives of the creation” of the organization. In other terms, entrepreneurial activities can only be legally carried out when they are in direct furtherance of the NGO’s statutory goals. Consequently, entrepreneurial activities that would be undertaken only for the purpose of raising revenue are not legally available to NGOs in Azerbaijan.

²³⁸ Section 191, Guidelines.

²³⁹ Article 22 of the NGO Law.

²⁴⁰ Decree No. 782 of the President of the Republic of Azerbaijan (September 2, 2002).

It is also important to note that many countries, even those distinguishing between “related” activities advancing the statutory objectives of an NGO and “unrelated” entrepreneurial activity, like the USA, permit NGOs to engage in all kinds of entrepreneurial activities. The distinction is usually made for the purpose of taxation, where income generated from “related” activities might be tax exempt, while income from unrelated activities is subject to taxation. Under French law, all kinds of entrepreneurial activities are permitted as long as the conduct of a steady entrepreneurial activity (as opposed to exceptional fundraising events involving the provision of services or sale of goods, like raffles, lotteries, flea markets, etc.) is expressly stated in the charter. Non-compliance with this requirement may lead to action in courts on the grounds of unfair competition.

The Azerbaijani requirement that entrepreneurial activities carried out by an NGO be related to its statutory purposes is not unusual. A similar approach may be found in some Western European countries, for example, in Belgium, where commercial and entrepreneurial activities may be carried out by NGOs as long as they support the organization’s non-profit statutory purpose.

Countries such as the USA that have chosen the “related activities” test have found it challenging to administer. Unfortunately, in practice it is often extremely difficult to distinguish “related” entrepreneurial activities from “unrelated” entrepreneurial activities. For example, if a museum sets up a shop on its premises to sell copies of the outstanding works of art in its collection, or perhaps books that picture them or postcards that replicate them, this can easily be argued to be “related” to the museum’s purpose. But what should happen if the museum opens a chain of retail stores that sell books related to art and culture, most of which have no connection to the museum’s collection? Is it engaging in an “unrelated” activity, or has it simply broadened its purpose and chosen to pursue this broader purpose using entrepreneurial means?²⁴¹ The challenge for governments and NGOs in applying this distinction between related and unrelated entrepreneurial activities is demonstrated by the fact that, in general, governments earn very little revenue from taxes imposed on “unrelated” activities.²⁴²

An alternative that was once adopted in Poland would exempt an NGO from taxes on profit from any entrepreneurial activities (both purpose-related and regular business activities) as long as that profit was spent for statutory purposes within one year of receipt or the next succeeding tax year. Although this may be a useful modification of the “pure” destination of income test, it nevertheless requires distinguishing between related and unrelated activities if income is retained and not spent.²⁴³

²⁴¹ See Tax Preferences For Nongovernmental Organizations by the International Center For Not-For-Profit Law (ICNL), www.icnl.org.

²⁴² See Henry B. Hansmann, *Unfair Competition and the Unrelated Business Income Tax*, 75 *Va. L. Rev.* 605 (1989).

²⁴³ Poland has now gone to a pure destination of income test. See Polish Tax Law (1995). Germany also has a rule similar to the former rule in Poland, and it was retained and amplified during the last round of tax reforms in 2000.

Currently in Azerbaijan, income from any entrepreneurial activity, whether related or unrelated, is subject to taxation. Therefore, the experiences described above may be useful only if the Azerbaijani government chooses to consider additional incentives for NGOs to engage in entrepreneurial activities, for example, in the social, cultural, or health care fields.

Ultimately, as the matter of right, not taxation, NGOs should enjoy maximum freedom in carrying out any kind of lawful entrepreneurial activities.

5. SUSTAINABILITY

The legal framework should be designed to ensure the enjoyment of the right to freedom of association and its implementation, and not to stifle the exercise of this right.²⁴⁴

Associations should, thus, be free to engage in any lawful economic, business, or commercial activities in order to support their not-for-profit activities, without any special authorization being required, while at the same time being subject to any licensing or regulatory requirements generally applicable to the activities concerned.²⁴⁵

Regulations may also reasonably require that public benefit organizations or charities fulfil additional requirements for the purpose of obtaining the special status enjoyed by such entities. However, actions undertaken to meet these requirements should be separate from the process of acquiring legal personality.²⁴⁶

Associations shall have the freedom to seek, receive, and use financial, material, and human resources, whether domestic, foreign, or international, for the pursuit of their activities. In particular, states shall not restrict or block the access of associations to resources on the grounds of the nationality or the country of origin of their source, nor stigmatize those who receive such resources. This freedom shall be subject only to the requirements in laws that are generally applicable to customs, foreign exchange, the prevention of money laundering and terrorism, as well as those concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards.²⁴⁷

Associations, such as non-governmental organizations, may receive direct funding from the state, or they may receive benefits in the form of tax relief, including incentives for private individuals to donate in lieu of tax relief, or an exemption from payment for certain services provided by the state, such as postal or communications services. Above all, any system of state support must be transparent.²⁴⁸

Any form of state support for associations should be governed by clear and objective criteria. The nature and beneficiaries of the activities undertaken by an association can be relevant considerations when deciding whether or not to grant it any form of public support. The granting of public support can also be contingent on whether an association falls into a

²⁴⁴ Section 53, Guidelines.

²⁴⁵ Section 191, Guidelines.

²⁴⁶ Section 157, Guidelines

²⁴⁷ Section 32, Guidelines.

²⁴⁸ Section 206, Guidelines.

particular category or regime defined by law, or whether an association has a particular legal form. Therefore, a material change in the statutes or activities of an association can lead to the alteration or termination of any state support.²⁴⁹

AZERBAIJANI LAW

5.1. FOREIGN FUNDING

Foreign funding has been an important source of support to Azerbaijani NGOs for decades. According to the CSO Sustainability Index Report for 2011, the majority of NGOs depended heavily on funding from international donors (\$34.4 million of total \$37 million in revenues for the Azerbaijani NGO sector). However, with introduction of restrictions of foreign funding in Azerbaijan during 2014-2016, the amount of foreign funding was reduced significantly.

According to the Laws on Grants, on NGOs, and the Administrative Code, NGOs are prohibited from receiving any aid except donations and grants.²⁵⁰

Grants remain to be the most common type of foreign aid. Under Article 1 of the Law on Grants, a grant is defined as “assistance rendered pursuant to this Law in order to develop and implement humanitarian, social and ecological projects, works on rehabilitation of destroyed objects of industrial and social purpose, of infrastructure in the territories damaged as a result of the war and disaster, programs in the field of education, health, culture, legal advice, information, publishing, sport, scientific research and design programs as well as other programs being important for the state and public. A grant shall only be provided for a specific purpose (or purposes).”

Article 2(5) of the Law on Grants provides that the following entities may act as donors: “international organizations and their representative offices, foreign governments and their representatives, international organizations of charitable, humanitarian and other social directions, financial or credit institutions, foreign public organizations including foundations, associations, federations and committees carrying out activities in the field of development of education, science, health, culture and sport, as well as funds, associations, federations and committees, as well as branches and representative offices of legal entities registered in the Republic of Azerbaijan (branches or representative offices of foreign NGOs) which signed the agreement stipulated in the Laws of the Republic of Azerbaijan on Freedom of Religion²⁵¹ and in the NGO Law may act as a donor subsequent to receipt of the right to provide grant within the territory of the Republic of Azerbaijan.”

²⁴⁹ Section 205, Guidelines.

²⁵⁰ Article 223-1.3 of the Administrative Code, article 1.1 of the Law on Grant, and article 24-1 of the NGO law.

²⁵¹ Law on Freedom of Religion of the Azerbaijan of Azerbaijan, August 20, 1992.

The Law on Grants further states that a “Donor shall be fully independent in the provision of a grant and in the selection of a grant beneficiary, projects and programs for whose benefit the grant is provided. On behalf of the Azerbaijan government, the grant shall be provided to legal and natural entities of the Republic of Azerbaijan based on a tender.”²⁵²

Material assistance used directly for generation of profit shall not be considered a grant. Material assistance shall not be considered a grant should it be used directly for the purposes of a political or lobbying activity for the adoption of a law or other legislative act, for political promotion, or for financing the election campaign of any political organization(s) or political figure(s).

An NGO is required to obtain a permit from the MoJ in order to receive a grant. As a part of the permit, an NGO-recipient or a donor shall obtain a reference from the relevant executive authority (the Ministry of Finance or MoF) on the financial and economic expediency of the grant.

To be valid, a grant agreement must be concluded in written form and include the names and contact information for the parties to the agreement. In order for the agreement to be registered with the MoJ, the agreement and project proposal (description) must be translated into Azeri. Penalties apply if there is no written agreement that meets these requirements.

Grants issued to recipients by Azerbaijani donors from the state budget are submitted for registration by the donor.²⁵³

The Law on Grants require that subgrants and other forms of assistance, as well as changes to grant agreements, must also be registered with the MoJ through the same process as original grants.

The Administrative Code defines penalties for individuals and legal persons for failure to submit grant agreements for registration within a period defined by the law.²⁵⁴ According to the Law on Grants, grant amounts under non-registered agreements (decisions) cannot be deposited in, or otherwise involved in transactions at a bank.²⁵⁵ The Administrative Code sets penalties for individuals and legal persons (including the banks) who attempt any bank or any other operations without registering the grant.²⁵⁶

NGOs are also permitted to receive donations. The NGO Law defines a donation as “aid in the form of funds and (or) other material form given to a non-governmental organization in accordance with this law without a condition to achieve a specific purpose.”²⁵⁷ The law

²⁵² Article 2(6) of the Law on Grants.

²⁵³ Article 4 of the Law on Grants.

²⁵⁴ Article 432 of the Administrative Code.

²⁵⁵ Article 4.5 of the Law on Grants.

²⁵⁶ Article 432 of the Administrative Code.

²⁵⁷ Article 24-1.1 of the NGO Law.

prohibits both the donating and receiving parties from promising or receiving, respectively, anything in return for a donation: according to the provisions on donations, the NGO that receives a donation “cannot, either directly or indirectly, provide, propose or promise any material or other gifts, privilege or discount to the person providing donation or any other person in return for the donation received or promised to it.”²⁵⁸ At the same time, the donating party “cannot, either directly or indirectly, in return for donations made or promised demand or accept for itself or any third person material or other gift, or any privilege or discount, or agree to such a proposal or a promise.”²⁵⁹

The NGO Law *de facto* prohibits NGOs from receiving cash donations, with a few exceptions stipulated in the NGO Law. As a general rule, donations must be received “as a bank transfer to the bank account of a non-governmental organization,” with the exception of cash donations of up to 200 manat for NGOs that indicate charity as a primary purpose in their charters.²⁶⁰ At the same time, Azerbaijani legislation does not provide a clear definition of a charity. The Tax Code (Article 13.2.35) defines “charity” as an “activity carried out by an individual and (or) a charitable organization that consists of rendering assistance, including gratuitous transfer of money, to individuals in need of financial or other assistance...” At the same time, Article 13.2.36 of the Tax Code defines a “charitable organization” as “a non-profit organization engaged in charitable work.” Such definitions do not make clear which organizations are charities. Provisions in the NGO Law on donations apply to branches and representations of foreign NGOs as well.²⁶¹

With the adoption of the Rules on Registration of Service Contracts on Provision of Services or Implementation of Works by NGOs, as well as by Branches or Representative Offices of Foreign NGOs, from Foreign Sources (hereinafter, Rules on Registration of Service Contracts) in October 21, 2015,²⁶² NGOs are required to register their service contracts funded by foreign sources, with the MoJ.

ANALYSIS

The Azerbaijani law requirements for NGOs to register every grant agreement with the MoJ as well as a prohibition on cash donations do not comply with international good practices. The requirement that donations be made via bank transfer only serves to make it very difficult for NGOs to fundraise from the general public. As to the exception for cash donations not exceeding 200 manat for organizations indicating charity as a primary statutory purpose, this exception is not very helpful, as most organizations acting in public interest cannot be identified as charities, because charity status is not defined in the law.

²⁵⁸ Article 24-1.2 of the NGO Law.

²⁵⁹ Article 24-1.3 of the NGO Law.

²⁶⁰ Article 24-1.4 of the NGO Law.

²⁶¹ Article 24-1.1 to 24-1.5 of the NGO Law.

²⁶² Rules on Registration of Service Contracts on Provision of Services or Implementation of Works by NGOs, as well as by Branches or Representative Offices of Foreign NGOs, from Foreign Sources, adopted by the Cabinet of Ministers of the Republic of Azerbaijan on October 21, 2015.

A requirement to obtain a registration or a pre-approval of a foreign grant, donation, or service contract is in violation of good international practice. Furthermore, prohibition of receipt of cash donations is also in violation of the good international and common practice, limiting NGO's access to resources.

5.2. GOVERNMENT FUNDING

States may provide funding to associations through a variety of different mechanisms. Such mechanisms should include the procurement of services, usually applied in cases where the government knows the exact quality and quantity of what it wishes to purchase, and grants, generally applied in cases where the government only identifies an issue for which it is willing to fund the best creative solution, without identifying in advance the nature and modalities of services expected from an association.²⁶³

Associations have the freedom to seek, secure, and utilize resources. Resources also include both public and private funding, tax incentives (for example, incentives for donations through income tax deductions or credits), in-kind benefits, and proceeds from the sale of goods belonging to the association, as well as other benefits attributed to an association (for example, income from investments, rent, royalties, economic activities, and property transactions).²⁶⁴

Any form of state support for associations should be governed by clear and objective criteria. The nature and beneficiaries of the activities undertaken by an association can be relevant considerations when deciding whether or not to grant it any form of public support. The granting of public support can also be contingent on whether an association falls into a particular category or regime defined by law, or whether an association has a particular legal form. Therefore, a material change in the statutes or activities of an association can lead to the alteration or termination of any state support.²⁶⁵

AZERBAIJANI LAW

According to Azerbaijani law, the government has authority to provide funding to NGOs through various mechanisms. For example, according to the Law on State Procurement, the government can procure goods and services from any organization, including NGOs.²⁶⁶ Moreover, according to the Law on Grants, the government can provide grants to NGOs.²⁶⁷

²⁶³ Section 210, Guidelines.

²⁶⁴ Section 200-2001, Guidelines.

²⁶⁵ Section 205, Guidelines.

²⁶⁶ The Law of the Republic of Azerbaijan on State Procurement dd. 27 December 2001 N 245-IIQ (hereinafter referred to as the "Law on State Procurement").

²⁶⁷ Article 2 of the Law on Grants.

The Council for State Support to NGOs²⁶⁸ is the main mechanism for government grants to NGOs at the national level. The NGO Support Council support NGO activities in 15 areas, including activities in the area of human rights, refugee rights, assistance to internally displaced persons, children, women, youth, health, science, education, culture, human trafficking, corruption, terrorism, NGO legislation, and integration of Azerbaijan into the world community. Since its establishment (in 2007), the NGO Support Council provided support for over 2,500 projects, with a value over \$20,000,000. Grants competitions are held annually, several times a year. In 2017, 317 NGOs received funding from the first grant competition held,²⁶⁹ a substantial number taking into consideration that the total number of registered NGOs in Azerbaijan is approximately 4,100 and many of them are currently inactive.

The NGO Support Council supports NGO activities in a broad variety of areas, from defending human rights and free legal aid, to social-economic development and environmental protection. Until May 2013, only Azerbaijani NGOs could apply for grants. Since May 2013, the NGO Support Council also provides funding for NGOs based in US and Europe. The allocated amount for any single project may not exceed 100,000 manat (roughly 58,800 USD).²⁷⁰

The NGO Support Council's grant competition is normally announced one month prior to date of submission of project proposals, and contains detailed competition rules. Applications must be submitted online.

The evaluation of projects submitted to the NGO Support Council is carried out in 3 stages:

1. Preliminary selection of the project proposals. The Council's Secretariat, reviews the conformity of the proposed project with the competition rules.
2. Evaluation of project proposals by contracted experts. The experts evaluate the projects on a score-based system according to the evaluation sheet approved by the NGO Support Council. Each project is codified by the NGO Council and evaluated by 3 independent experts online.
3. Final decision of the NGO Support Council on the project proposals. The 11 members of the Council discuss each project proposal individually and make a decision in view of the experts' opinions. The Secretariat then places information about winning organizations on its webpage and notifies them individually by mail.

Those NGOs which project proposals were not successful can appeal to the NGO Support Council within 10 days from the time the decision is made. Appealing NGOs are invited to the Council to familiarize themselves with the expert opinions on their project proposal. In

²⁶⁸ Established by the Decree № 674 of the President of the Republic of Azerbaijan "On Establishment of the Council of State Support to Non-Governmental Organizations under the President of the Republic of Azerbaijan" (13 December 2007), with subsequent amendments (hereinafter referred to as the "NGO Support Council").

²⁶⁹ See <http://cssn.gov.az/news.php?id=2206&lang=az>.

²⁷⁰ Link: www.cssn.gov.az/en/xeberler/20130520073931629.html

practice, very few NGOs use this appeal mechanism. For example, in 2017, 27 NGOs submitted appeals on decisions of the NGO Support Council on grant awards under the recent call. Out of these appeals, nine were considered well-grounded and, as a result, eight of them received awards. At the same time, in 2017, the NGO Support Council established a hotline to study the complaints and recommendations of NGOs. NGOs can call this number (1672) on issues relating to legal obstacles as well as other concerns that impede their work.²⁷¹

Overall, the procedure of conducting competitions for grants has been impartial and transparent. NGOs interested in this source of funding have been closely monitoring the work of the NGO Support Council.

On October 21, 2015, the President of the Republic of Azerbaijan approved the Rules on Coordination with the NGO Support Council of Grant Giving to NGOs by the State Bodies,²⁷² which requires that the state bodies seek the NGO Support Council's opinion about the topics of their grant competitions, as well as on the project proposals submitted by NGOs in response to these calls.

Azerbaijani law places strict financial prerequisites on participation in government procurement that make it essentially impossible for NGOs to bid on government contracts. Specifically, the Law on Procurements requires that a legal entity or natural person pay both a bid security and performance security in order to participate in procurement bids. A bidding entity must provide the government with up to 0.5% of the total price of the procurement or the equivalent of 1.5% of the costs to cover tender expenses.²⁷³ The Law also requires a security deposit of 1%–5% of the total price of the procurement. There is an additional requirement that the contract recipient pay a deposit to guarantee completion of the contract. Guarantees by banks, letters of credit, securities, cash, deposits, and any other financial assets can be used as deposits. In practice, even large non-commercial organizations are unable to provide the minimum bid security required by current law.

The Law on Youth Policy allows for government financing of NGOs to implement the goals and activities described in the Law. The funds necessary to cover such programs are included in the budget of the Ministry of Youth and Sports. These programs should be awarded based on competitive procurement. The Youth Fund of the Ministry of Youth and Sports was created by a presidential Decree in December 2011 that also adopted its Regulations.²⁷⁴ On December 29, 2012, the President signed a decree amending the Regulations of the Youth Fund.²⁷⁵ This decree placed the Fund directly "under the President" rather than being related to the Ministry of Youth and Sport. Also, the Youth Fund was explicitly designated as a "non-commercial legal entity" and the MoJ was ordered to register it in 15 days. The executive director of the Youth Fund is appointed and removed by the President (Article 5.1 of Regulations). Members of the Council of the Youth Fund are also appointed directly by the

²⁷¹ See http://www.qht.az/index.php?action=static_detail&static_id=18353.

²⁷² Presidential Decree № 652 (21 October 2015).

²⁷³ Article 29.1 of the Law on State Procurement.

²⁷⁴ Presidential Decree № 542 (19 December 2011).

²⁷⁵ Presidential Decree № 801 (29 December 2012).

President (Article 5.5). Thus far, the “presidential” Youth Fund has enjoyed increased financial support. According to the Cabinet of Ministers Decision, its budget for 2013 was 250,000 manat,²⁷⁶ but on March 18, 2013, the President allocated additional 5 million manat to the Youth Fund.²⁷⁷ For 2017, the budget of the Youth Fund is 1 mln manat.

Procurement of social services from the state budget can serve as another source of national funding for NGOs. The Law of the Republic of Azerbaijan on Social Service²⁷⁸ (hereinafter Social Service Law) allows state bodies to use budgetary funds to purchase social services from NGOs.²⁷⁹ On December 30, 2012, the Cabinet of Ministers adopted two decisions: first, the Rules of Provision of Social Services at Homes and State Social Service²⁸⁰ and, second, the Rules on Approving Rules of Providing State Orders in the Area of Social Services²⁸¹ (hereinafter Rules on State Orders for Social Services). The Rules on State Orders for Social Services were also accompanied by a “sample contract on social order in the area of social service.” These Rules cover issues including budgeting for social orders, the procedure for tender commissions, membership in such commissions, participation of NGOs in tenders, and designation of responsibility and supervision over the process.

Previously, on November 29, 2012, the President adopted another decree assigning implementation of the Law on Social Services to the Ministry of Labor and Social Protection of Population (MoLSPP), the Ministry of Health, the Ministry of Education, and local executive powers.²⁸²

According to the Rules on State Orders for Social Services, social orders will be issued to contractors on a competitive basis by “tender commissions” that will be created at the MoLSPP, the Ministry of Health, the Ministry of Education, and local executive powers. Tender commissions will be established and will operate according to the rules approved by the heads of the relevant state bodies procuring social services. The legislation provides general guidance for such rules. Specifically, members of tender commissions shall include experts from the relevant state bodies. Representatives of central executive bodies, municipalities, and NGOs are invited to meetings of the commissions when questions of interest to them are being discussed. Commissions can invite other experts without voting rights to their meetings. Tender commissions shall be chaired by government officials.

²⁷⁶ Decision № 38 of the Cabinet of Ministers of the Republic of Azerbaijan (7 March 2013)

²⁷⁷ Presidential Order № 2806 on Additional Measures of Support to Activity of the Youth Fund under the President of the Republic of Azerbaijan” (18 March 2013).

²⁷⁸ Law of the Republic of Azerbaijan on Social Service № 275-IVQ (30 December 2011.)

²⁷⁹ Article 26 of the Social Service Law.

²⁸⁰ Cabinet of Ministers Decision № 328 on Rules of Provision of Social Services at Homes and State Social Service Institutions on a Paid and Partially Paid Basis" (30 December 2013).

²⁸¹ Cabinet of Ministers Decision № 330 on Approving Rules of Providing State Orders in the Area of Social Services to Municipalities, Physical and Legal Entities, Including Non-governmental Organizations (30 December 2013) (Cabinet of Ministers Decision № 330).

²⁸² Presidential Decree № 758 on Additional Measures With Regard to the Implementation of the Social Service Law (29 November 2012).

NGOs and municipalities may participate in tenders for social orders. An NGO shall meet the following requirements in order to participate in the tender for a social order:

- the NGO shall fully or partially specialize in the provision of the social service that is being outsourced;
- the NGO shall possess professionalism, experience, technical and financial resources, human resources, management competence, and the reliability necessary to perform the contract; and
- the NGO shall not have outstanding tax or other mandatory payment debts.²⁸³

According to Rules on State Orders for Social Services, supervision over performance under a social order contract is conducted by the state body that procures the services. Disputes between parties to a social order contract must be settled in courts.²⁸⁴

On January 9, 2013, for the first time in the history of Azerbaijan, the Government of Azerbaijan allocated 2 million manat from state budget funds for the procurement of social services from NGOs, along with other legal entities and individuals, in order to implement the Law on Social Service.²⁸⁵

ANALYSIS

The regulations and implementation of procedures by the NGO Support Council should be perceived as advanced in the former Soviet Union region. Engaging NGOs in the delivery of social services will have multiple benefits for the government, the public, and NGOs. The procurement of social services at the expense of the state budget not only provides NGOs with a new source of funding, but also provides an opportunity to broaden the scope of available services and improve the quality of services delivered to the population. The delivery of services to people strengthens connections between NGOs and the individuals they serve. Strengthening the connections between NGOs and people allows NGOs to gain broader support from the general public and attract volunteers and contributions, which then result in the greater sustainability of NGOs. The government, in turn, procures efficient and inexpensive services from NGOs, which are often subsidized by the NGO's own resources, such as volunteer labor. In addition, when government and NGOs work together to solve social problems, they often improve the trust and cooperation between each other.

5.3. TAX EXEMPTIONS FOR NGOS AND FOR THEIR DONORS.

Associations, such as non-governmental organizations, may receive direct funding from the state, or they may receive benefits in the form of tax relief, including incentives for private individuals to donate in lieu of tax relief, or an exemption from payment for certain services

²⁸³ Article 3 of the Rules on State Orders for Social Services, approved by Cabinet of Ministers Decision № 330.

²⁸⁴ Article 8 and 9 of the Rules on State Orders for Social Services.

²⁸⁵ See Presidential order № 2653 (9 January 2013) referred to above.

provided by the state, such as postal or communications services. Above all, any system of state support must be transparent.²⁸⁶

Resources also include both public and private funding, tax incentives (for example, incentives for donations through income tax deductions or credits), in-kind benefits, and proceeds from the sale of goods belonging to the association, as well as other benefits attributed to an association (for example, income from investments, rent, royalties, economic activities, and property transactions).²⁸⁷

Any form of state support for associations should be governed by clear and objective criteria. The nature and beneficiaries of the activities undertaken by an association can be relevant considerations when deciding whether or not to grant it any form of public support. The granting of public support can also be contingent on whether an association falls into a particular category or regime defined by law, or whether an association has a particular legal form. Therefore, a material change in the statutes or activities of an association can lead to the alteration or termination of any state support.²⁸⁸

Regarding the transfer of assets obtained with the assistance of tax exemptions or other public benefits, it may be legitimate to have them transferred to associations with similar objectives.²⁸⁹

AZERBAIJANI LAW

5.3.1. INCOME TAX FOR NGOS

The Tax Code uses the term “non-commercial organization”²⁹⁰ instead of NGO, but does not provide its definition.²⁹¹ A non-commercial legal entity is defined by the Civil Code as “a legal person not having the generation of profit as the main purpose and not distributing received profit among participants.”²⁹² NGOs are generally payers of income (profits) tax under Azerbaijan’s Tax Code. Exemptions from profit tax only apply to certain types of revenues. Many Azerbaijani NGOs do not pay profit tax because they are exempt from paying profit tax on revenues received from grants. (The primary and often single income source for many NGOs is grants.) Grants are exempt from profit tax. In addition, revenues

²⁸⁶ Section 206, Guidelines.

²⁸⁷ Section 201, Guidelines.

²⁸⁸ Section 205, Guidelines.

²⁸⁹ Section 258, Guidelines.

²⁹⁰ Please recall that the Tax Code uses the term “non-commercial organization”, and not non-governmental organization, the term which appears in the NGO Law. *See supra* Section 4.3. However, for the purpose of this Assessment we will continue using the term “NGO.”

²⁹¹ Article 13.2.42 of the Tax Code only references Civil Code, which is supposed to provide a definition of “non-commercial legal entity.”

²⁹² Article 43.5 of the Civil Code.

received by a non-commercial organization from gratuitous transfers, membership fees, and donations are exempt from profit tax.²⁹³

The Tax Code also uses term “charitable organizations,” which is defined as “non-commercial organization conducting charitable activity.”²⁹⁴ Charitable organizations are exempt from profit tax, except with respect to income received from entrepreneurial activities.²⁹⁵ The Tax Code provides a definition of “non-commercial activity” as “conducting activity, which is not prohibited by law, which does not pursue the generation of income as the main purpose, and which envisages the use of generated income exclusively in non-commercial purposes, including for the purposes stated in its bylaws, otherwise activity is recognized as commercial.”²⁹⁶ In addition to explicitly exempt income received as donations, membership fees and gratuitous transfers,²⁹⁷ income from non-commercial activities might include income from the one time sale of property, or a positive balance from exchanging foreign currency for local currency, among others. There is, however, no procedure for obtaining the status of charitable organization; hence it is practically impossible to take advantage of this exemption.²⁹⁸ Moreover, unfortunately, no other laws in Azerbaijan address this “charitable organization” status which appears in the Tax Code. In addition, no objective procedures exist in the Tax Code or elsewhere for distinguishing a “charitable organization” from other NGOs that are not considered charities, but do perform educational, health care, social, and other charitable services. This makes it quite difficult to determine with any certainty which NGOs might be eligible for this benefit, or how an NGO might go about claiming the benefit.

GENERALLY EXEMPT TYPES OF INCOME

As noted above, three types of income received by NGOs are exempt from taxation under the Tax Code: gratuitous transfers of assets, membership fees, and donations. These types of income are not defined within the framework of the Tax Code. The NGO Law defines donations as “aid in the form of funds and (or) other material form given to a non-governmental organization in accordance with this law without a condition to achieve any purpose.”²⁹⁹

A fourth type of income -- grants -- is, in practice, exempted from profit taxation, although the Tax Code does not specifically exempt grants. Under the Law on Grants,³⁰⁰ a “grant” is described as purpose-oriented, gratuitous, non-repayable assistance provided under the

²⁹³ Article 106.1.2. of the Tax Code.

²⁹⁴ Article 13.2.36 of the Tax Code.

²⁹⁵ Article 106.1.1. of the Tax Code.

²⁹⁶ Article 13.2.27 of the Tax Code.

²⁹⁷ Grants are not mentioned in the tax code. It is the interpretation of local experts that “gratuitous transfers,” in conjunction with other laws, can be interpreted as “grants.” Gratuitous transfers in forms other than grants and donations are not permitted.

²⁹⁸ Article 106.1.1 of the Tax Code.

²⁹⁹ Article 24-1.1 of the NGO Law.

³⁰⁰ Section 1 of the Law on Grants.

procedure in the Law on Grants for preparation and implementation of projects beneficial to the state and society.³⁰¹ To qualify as a recipient of a grant, a domestic legal entity must have as its primary statutory purpose either of the following: (1) charitable activity; or (2) the implementation of projects and programs eligible for a grant that do not pursue the direct derivation of profit from the grant.³⁰²

A prior version of the Law on Grants exempted grants from profit taxation,³⁰³ but the current law notes that “issues of taxation, connected with the obtaining ... of a grant or of other monetary or material assistance are regulated by the Tax Code of the Republic of Azerbaijan.”

TAXATION OF INCOME FROM ENTREPRENEURIAL (BUSINESS) ACTIVITIES

Entrepreneurial activity is defined by the Tax Code as activity independently conducted by a person, the primary purpose of which is derivation of profit from the use of property, provision of goods, performance of works, or provision of services.³⁰⁴

Under the Tax Code, income from entrepreneurial activities by NGOs, including charitable organizations, is taxed. No distinction is made between income arising from activities related to and those unrelated to the statutory purposes of the NGO.

Under the broader NGO legislation, NGOs are permitted to engage in entrepreneurial activities only if they are related to their statutory purpose.³⁰⁵ The NGO Law requires NGOs to conduct accounting for revenues and costs of entrepreneurial activity separately from tax exempt revenues.³⁰⁶

AVAILABILITY OF EXEMPTIONS FOR PASSIVE (INVESTMENT) INCOME

Dividends³⁰⁷ and interest³⁰⁸ are subject to a 10% tax withheld at the source, regardless of whether NGOs or businesses are the recipient. Dividends of a resident legal entity taxed at the source are not subject to any further taxation when received by the legal entities and individuals.

³⁰¹ E.g., humanitarian, social, and ecological projects; restoration projects aimed at repairing industrial and social facilities and infrastructure damaged as a result of war or natural disaster; programs in support of education, healthcare, culture, legal advising, information, publishing, sports, scientific, research and design, and other programs of great importance for the state and society.

³⁰² Section 3 of the Law on Grants.

³⁰³ The Law on Grants used to provide in its Section 5(1) that monetary and other material assistance obtained in accordance with the stipulated procedure shall be exempted from all types of taxes, duties, and obligatory payments to the state budget.

³⁰⁴ Article 13.2.37 of the Tax Code.

³⁰⁵ Article 22 of the NGO Law.

³⁰⁶ Article 22.3 of the NGO Law.

³⁰⁷ Article 122 of the Tax Code.

³⁰⁸ Article 123 of the Tax Code.

When a resident legal entity receives an interest payment that has been taxed at the source, the amount of interest is included in the entity's taxable income. In this case, the amount of tax withheld at the source can be deducted from the aggregate income tax obligation of the legal entity for the reporting period, provided withholding of interest tax is confirmed by appropriate documents.³⁰⁹

5.3.2. DEDUCTION OF CHARITABLE CONTRIBUTIONS

Neither legal entities nor individuals are entitled to any deductions for their contributions to charitable organizations or NGOs.

5.3.3. VAT FOR NGOS AND DONORS

Threshold for Registration: Organizations conducting entrepreneurial activity are obligated to register as value-added tax (VAT)-payers if the volume of their taxable operations in a year exceeds 200,000 manat (\$120,000).³¹⁰ Organizations must register within ten days of the date at which their taxable operations exceed this threshold. Entities with income below this threshold may voluntarily register as VAT-payers.³¹¹

Tax Exempt Transactions: Article 106.1.2 exempts grants of NGOs. Zero rate is applied as per article 165.1.2 for “import of goods, provision of goods, works and services to grant recipients on the expense of grants, received from abroad on the basis of the grant contract (decision)”;.

Article 164 of the Tax Code establishes a list of supplies and imports that are exempt from VAT, regardless of whether they are performed by commercial or non-commercial entities. Those exemptions are linked to the nature of services, which, *inter alia*, include the following:

- turnover related to the sale and purchase of mass media products including editorial, publishing, and printing activities (except for advertisement services);³¹²
- editorial, publishing, and printing activities connected with production of schoolbooks for middle-schools, children's literature, and publications of national importance, subsidized from the budget;³¹³ and
- ritual services by funeral bureaus and cemeteries.³¹⁴

VAT Rebate Procedure: A special procedure has been established for persons acquiring or importing³¹⁵ goods, works, or services funded by “gratuitous monetary transfers” from an

³⁰⁹ This applies only to interest, not dividends. In the latter case, 10 percent withholding is final.

³¹⁰ Article 155.1 of the Tax Code.

³¹¹ Article 156 of the Tax Code.

³¹² Article 164.1.7 of the Tax Code.

³¹³ Article 164.1.8 of the Tax Code.

³¹⁴ Article 164.1.9 of the Tax Code.

international organization or foreign legal entity or individuals pursuant to an international agreement to which Azerbaijan is a party. The recipients must claim from the tax authorities any VAT they paid within the calendar month following the month in which the taxable operation or taxable import occurred. Reimbursement is due within 45 days of receipt of the application. This procedure is also available for purchases made with grant funds (all grant-funded transactions meeting certain requirements are subject to a zero VAT tax rate) if the VAT is included in the price, as described above.

Some foreign NGOs which operate in Azerbaijan under the bilateral agreement between the USA and Azerbaijan³¹⁶ faced some difficulties concerning VAT rebate. In particular, the Ministry of Taxes considers that the exemption of zero VAT rate is applicable to grant funds for direct program costs only, and not to overhead fees and indirect costs.³¹⁷

5.3.4. SOCIAL PAYMENTS, LAND AND OTHER TAXES AFFECTING NGOS.

Azerbaijan assesses a property tax, a social insurance payment, and a land tax. For the purposes of the property tax, taxpayers are all enterprises (including NGOs, which are considered “enterprises” for the purpose of this tax) and individuals that own taxable objects.³¹⁸ The tax base for assessing the property tax is, in the case of physical persons, the value of buildings and motor vehicles owned by them. The tax base for assessing property tax for legal entities (enterprises) is the annual average balance sheet value of fixed assets and balance sheet value of motor vehicles. The property tax on fixed assets of enterprises is 1%.

NGOs must pay 22% of their consolidated payroll towards the Social Insurance Fund (i.e., social security tax), but those NGOs (local and foreign) coordinated by the Cabinet of Ministers and engaged in provision of aid to refugees and internally displaced persons (IDPs) for the period of implementation of the state program to improve the living conditions of those populations are exempt,³¹⁹ paying only income tax. In addition, under the bilateral agreement between the Azerbaijan government and the US government, grants provided by the latter or its agents are exempted from the 22% payroll payment.³²⁰

For the purposes of land tax, taxpayers are enterprises and individuals who own or use land plots in the territory of the Republic of Azerbaijan. Land tax is paid on an annual basis at

³¹⁵ Apparently, *imports* are also covered, though this is only mentioned once in the VAT Instruction, and not in the Tax Code itself.

³¹⁶ Section 1 of the Agreement between the Government of the United States of America and the Government of the Republic of Azerbaijan regarding cooperation to facilitate the provision of assistance (May 11, 2000; ratified by Azerbaijan July 18, 2000).

³¹⁷ Letter from Ministry of Taxes to American Bar Associations’ representative office in Azerbaijan (ABA), 3 April 2012 (on file with author).

³¹⁸ In practice, this tax is imposed on NCOs regardless of their engagement in entrepreneurial activities.

³¹⁹ Article 15.18 of the Law of the Republic of Azerbaijan on Social Insurance (February 1997) (hereinafter referred as the “Insurance Law”).

³²⁰ Article 1 of the Agreement between the Government of the USA and the Government of the Republic of Azerbaijan regarding cooperation to facilitate the provisions of assistance, May 11, 2000.

various rates, based on the size of the land plot owned or used by the taxpayer, its location, and purpose.

Entities exempt from property tax include, *inter alia*, public organizations of the handicapped and publicly financed institutions. The property tax is also not levied on buildings used as artists' workshops. The tax base for assessing the amount of property tax is reduced by the value of buildings (objects) used by institutions of education, health care, culture, and sports, if used for their primary purpose. No benefits with respect to the land tax are applicable to NGOs.

The excise tax, road tax, and certain other taxes apply irrespective of an organization's status as commercial or non-commercial.

ANALYSIS

Income Tax: It is a common practice that NGOs engaging in public benefit activities (charities) are granted more tax benefits than other types of NGOs. This is particularly true in regards to exemptions for donors, who make contributions to such organizations. Granting such special privilege does require a specially defined legal status of a public benefit, charitable, or similar organization, which would be clearly distinguishable from other NGOs. However, such status does not exist in Azerbaijan at this time. The mere use of a term "charitable organization" does not replace the need to introduce such status into the law and to make it operational.

The scope of activities deemed publicly beneficial or charitable, the particular requirements regarding the income and expenditures of charitable organizations, and their internal governance system and transparency requirements vary from country to country, as do the procedures for granting and withdrawing preferential status. In some countries, this status is granted by the tax authorities; in other countries, it is granted by the courts, while others use a commission composed of representatives of relevant governmental agencies and NGOs. The scope of this assessment does not allow for delving into greater details on these aspects (except that basic approaches to treatment of income from economic activities will be touched upon below), though ICNL would be glad to assist Azerbaijan in structuring a sound fiscal regulatory regime.

Gratuitous money transfers, membership fees, and donations are traditionally not considered as taxable income under the tax laws of most European countries. Azerbaijan's approach meets the standard of international practice on this issue. However, the implementation of those exemptions would be improved by the introduction of clear definitions. In particular, this relates to the lack of a definition of the term "gratuitous money transfer," the lack of reference in the tax code to a "grant," as such, as tax exempt income, as well as the lack of clarity on whether "donations" and "grants," which are the only types of aid that NGOs are permitted to receive, constitute a "gratuitous money transfer."

While it is advisable to provide NGOs with at least some preferences in regard to profit tax on profits generated from entrepreneurial activities, international practices greatly vary on this matter, with some countries providing with full exemption under specific circumstances (i.e., if entrepreneurial activities are considered as “related” to statutory purposes, for example in the US) and others providing no preferences at all. The one good example worthy of consideration in reforming the tax regime for NGOs’ income from entrepreneurial activity is to allow for its treatment in a manner similar to the income of individual entrepreneurs and small businesses, including consideration of a simplified tax. With the Azerbaijani government striving to limit NGOs’ dependence on foreign funding, introducing preferences for income from entrepreneurial activities would help to achieve the government’s purpose.

Taxation of Passive (Investment) Income: International best practices often provide for exemptions of at least some forms of passive income of public benefit (charitable) organizations, including dividends, interest, royalties, gains from the sale of assets, and rent. The intent of this policy is to support those NGOs which provide publicly beneficial services to the general public. The tax exemption of passive income is of particular importance for foundations, which rely on passive earnings to preserve and build upon their endowments.

Tax Incentives for Donors: Allowing tax deductions for charitable giving is an exceedingly important incentive for encouraging philanthropy and should be introduced in the Azerbaijani Tax Code.

VAT: The Tax Code appropriately sets a threshold for tax payers, including NGOs, to enter VAT payer status. Thus, small organizations or organizations with limited taxable activities may avoid additional filings and accounting requirements. The list of tax-exempt transactions could be extended for certain activities of public interest, along the lines of the European Union’s 6th Directive on VAT,³²¹ (which exempts the supply of services and goods closely linked to welfare and social security, including those supplied by elderly people’s homes; for the protection of children and young people; for the benefit of members of organizations of a political, trade union, religious, patriotic, philosophical, philanthropic, or civic nature; and for the organization of fundraising events, among others). The use of reduced rates for certain taxable activities offered by NGOs could also generate significant support to the nonprofit sector. In France, for example, cultural services are taxed at rates between 2.2% and 5.5% and NGOs may deduct VAT paid on expenses, usually at the rate of 19.6%, thus generating cash flow for the tax payer through the subsequent VAT credit.

Payroll and Social Payments: Azerbaijani legislation requiring employees of NGOs to pay social payments is in compliance with international best practice. Despite the fact that NGO employees typically expect and receive a lower level of compensation than that which is paid for comparable work in the for-profit sector, there is no justification for exempting them from

³²¹ European Union’s 6th Council Directive on the Harmonization of the Laws of the Member States relating to Turnover Taxes (17 May 1977). *See*, for example, Article 13.

the usual social security and related employment taxes that are exacted from workers in the governmental or for-profit sector.

Social security and similar payments are exacted on the basis of actuarial estimates of what is required in order to meet the state's obligations to retired workers over the long term. It seems unfair to other workers to exclude those who are employed in the NGO sector from bearing their share of providing health and pension benefits.³²² On the other hand, workers in the NGO sector should not be excluded from the benefits provided under these state schemes. In short, employees of NGOs should not suffer the double disability of working for a lower wage and being excluded from basic employee benefit programs provided to other employees in that society.

A government donating foreign assistance might negotiate with the recipient state for special exemptions tied to its aid. Usually, special tax exemptions for the donor country's aid, including exemptions from employment or payroll payments, are negotiated and stated in a bilateral agreement. The recipient government in this scenario must balance the "being socially unfair" argument with the possibility of obtaining aid which might otherwise not become available to satisfy people's needs.

It is notable that while the rates of employment or payroll payments are high in Western and Central European countries, NGO employers and workers are not exempt from those payments. In all of Western Europe, taxes are due on salaries paid out of any grants.

Of course, in Azerbaijan, as well as in some other countries in transition, the situation might differ from that described above. In some countries, the major foreign donors might decide not to make grants unless the receiving government provides additional tax benefits, including payroll tax exemptions. In this situation, the government must make a political decision, taking into consideration a variety of factors including national and international NGOs advocacy.

5.4. VOLUNTEERS

Many associations are unlikely to be able to pursue their objectives without employing some staff and/or having volunteers carrying out some activities on their behalf. It is, therefore, legitimate for associations to use their property and assets to pay their employees and to reimburse the expenses of those who act on their behalf.³²³

AZERBAIJANI LAW

³²² In Australia, however, NGOs involved in social welfare work pay reduced sales taxes and, if their payroll is over A\$10,000 a month, a reduced payroll tax as well, depending on the state in which they are located. Similar preferences are available in Brazil for a special group of social welfare NGOs.

³²³ Section 194, Guidelines.

The Law on Voluntary Activity dated June 9, 2009, clarifies the legal status of volunteers and makes it easier for them, especially for volunteers who are foreign or considered stateless persons, to protect their rights with both host organizations and the state. According to the Law on Voluntary Activity, a volunteer can carry out voluntary works/services in state bodies, organizations financed from the state budget, local self-governed bodies and non-governmental organizations. Voluntary activity can be carried out in the following areas: rendering of assistance to invalids, lonely people, elderly persons, low-income families, refugees and IDPs; promotion of humanism and tolerance; protection of consumers' rights; legal and cultural education; education and upbringing of children and youth, and their physical and mental development; development of sports; provision of information on diseases and epidemics; propaganda of a healthy lifestyle; protection of the environment; protection of historical and cultural monuments as well as protection of cultural and moral heritage; elimination of the results of armed conflicts, natural disasters, industrial accidents, fires, epidemics, epizootics, and other emergencies including provision of assistance to victims of emergencies; provision of assistance to persons released from penitentiary institutions, drug addicts, and victims of domestic violence; and other areas of activities which are not in contradiction to the requirements of the legislation of the Republic of Azerbaijan.³²⁴

The relationship between the volunteer and the host organization is regulated by means of a written contract (Article 9.1). The law does not permit verbal agreements, even for a minor and short-term volunteer assignment. The December 17, 2013, changes amended the Administrative Code to establish a penalty for failure to conclude contracts with volunteers.³²⁵

Both the volunteer and host organization have certain rights and responsibilities under the law. For instance, volunteers have, *inter alia*, the right to demand provision of a safe and healthy work environment; obtain information about conditions and nature of voluntary activity; demand compensation for daily travel expenses; receive compensation for damages caused to his/her life and health while carrying out voluntary activity; and receive compensation for usage of his/her own property, among others.

The legislation enables NGOs to have foreign volunteers and in practice, the Migration Service is quite responsive to NGOs' requests to grant entry permits for their foreign volunteers. In order to obtain a visa, an NGO must submit a set of documents to the Migration Service, including a contract with the volunteer and a copy of the excerpt from registry of legal entities.

ANALYSIS

³²⁴ The Law on Voluntary Activity was amended in 2013, extending the scope of voluntary activity to include assistance provided to "persons in difficult life situations" that are the target audience of the Social Service Law referred to in Section 5.2.

³²⁵ Presently Article 579 of the Administrative Code of 2016.

While the Law on Voluntary Activities sets forth the basic framework for volunteerism in Azerbaijan, several problems remain that may hinder voluntary activities. For example, it might also be unreasonable to demand a written contract in all instances, even for short-term volunteering projects, when neither party (the host NGO and volunteer) really desires it. Much would also depend on how the Law on Voluntary Activity is implemented and interpreted by relevant state bodies.

6. GOVERNMENT OVERSIGHT

6.1. SUPERVISION

An association must be independent and free from undue interference of the state or of other external actors.³²⁶

Until proven otherwise, the state should presume that a given association has been established in a lawful and adequate manner, and that its activities are lawful.³²⁷

Intervention should only be permissible in order to bring an end to a serious breach of legal requirements, such as in cases where either the association concerned has failed to address this breach, or where there is a need to prevent an imminent breach of said requirements because of the serious consequences that would otherwise follow.³²⁸

To ensure greater transparency and increase regulatory independence, legislation should define the procedure for appointing supervisory bodies, as well as the grounds for inspecting associations, the duration of inspections and the documents that need to be produced during inspection.³²⁹

Inspections conducted with the primary purpose of verifying compliance with internal procedures of an association should not be permissible. Moreover, under no circumstances should associations suffer sanctions on the sole ground that their activities breach their own internal regulations and procedures, so long as these activities are not otherwise unlawful.³³⁰

[...] oversight and supervision must have a clear legal basis and be proportionate to the legitimate aims they pursue.³³¹

Regulations on inspections must also contain clear definitions of the powers of inspecting officers, must ensure respect for the right to privacy of the clients, members, and founders of the associations, and must provide redress for any violation in this respect. Any justified need

³²⁶ Section 41, Guidelines.

³²⁷ Section 58, Guidelines.

³²⁸ Section 177, Guidelines.

³²⁹ Section 229, Guidelines.

³³⁰ Section 178, Guidelines.

³³¹ Section 228, Guidelines.

for an inspection should also provide associations with ample warning time before the inspections, as well as information on the maximum duration of an inspection. In addition, where associations are required to provide documents prior to or during inspection, the number of documents required should be defined and reasonable, and associations should be given sufficient time to prepare them.³³²

AZERBAIJANI LAW

Article 31 of the NGO Law provides that “In cases where actions are taken which contradict the objectives of this law, the relevant executive authority may warn a NGO in written form or instruct it to eliminate the violations. An NGO shall have the right to lodge a complaint about such warning or instruction in court. If an NGO is given a written warning or instruction to eliminate violations more than two times within one year, such non-governmental organization may be liquidated by court decision.” The authority to issue a warning letter is vested with the MoJ by the decision of the President of the Republic of Azerbaijan.³³³

On December 28, 2015, the MoJ adopted the Rules on Studying the Activities of Non-governmental Organizations, Branches or Representative Offices of Foreign Non-governmental Organizations (hereafter referred to as the “the MoJ Rules”)³³⁴ which establish the procedure for the MoJ to study the activity of local and foreign non-governmental organizations with registered offices in Azerbaijan.

Studying should be understood as inspecting or investigating whether an NGO’s activity is in compliance with its charter (regulation) and the legislation of the Republic of Azerbaijan.³³⁵

The following issues are examined during the study of NGOs’ activity:

- compliance of the NGO’s activity with its charter (regulation);
- compliance with the requirements of legislation, including conducting mandatory meetings of management bodies of NGOs as well as maintaining a register of members, utilizing income in accordance with organizational charter (regulation), and ensuring transparency of activities (this is not clear what is meant by the latter);
- compliance with the requirements of the Registration Law, including timely submission by non-commercial entities and educational institutions of information necessary for the state registry, and compliance of the documents in the state registry with legislation;

³³² Section 231, Guidelines.

³³³ Decree of the President of the Republic of Azerbaijan on implementation of the Law on NGOs, approved on October 04, 2000, № 401, published in official newspaper *Azerbaijan* on October 10, 2000, № 232.

³³⁴ The Rules on Studying the Activities of Non-governmental Organizations, Branches or Representative Offices of Foreign Non-governmental Organizations, adopted by the Decision # 11 of the Collegium of the Ministry of Justice (MoJ) of the Republic of Azerbaijan on December 28, 2015, and published on February 13, 2016.

³³⁵ Overview of the “Rules on Studying the Activities of Non-governmental Organizations, Branches or Representative Offices of Foreign Non-governmental Organizations”, ICNL, February 17, 2016.

- submission of annual financial reports, observance of legislation on grants and accounting, and legal compliance of financial and economic activity; and
- observance of relevant normative legal acts relevant to the activity of the NGO.³³⁶

If NGOs violate the terms of the MoJ Rules related to study activities, such as failure to respond to inquiries, failure to submit required documents and information, or giving false information, sanctions will be imposed in accordance with the Administrative Code.³³⁷

The MoJ Rules grant the MoJ full discretion to decide which NGO shall be a subject to an extraordinary study based on the following grounds:

- in case of notification about possible offenses received from other state bodies;
- if the information has been shared through mass media, received as applications (complaints) from individuals and legal entities, as well as from the NGO participants; or
- if a violation is suspected or has been identified directly by the MoJ.

The MoJ Rules remain a concern for NGOs as they provide discretionary powers to the MoJ without sufficient guarantees for NGOs against potential abuse of powers.

Even though the law limits state involvement in NGO operations, in practice, in the regions the local executive authority has required organizations to seek permission even to hold meetings. Recently, authorities banned a number of events planned both by local as well as foreign NGOs in the regions of Azerbaijan.

All legal entities, including Azerbaijani NGOs, are required to submit identical reports under tax and social insurance legislation. These various reports are filed monthly, quarterly and annually, including:

- Income tax on salaries - quarterly;³³⁸
- VAT - monthly;³³⁹
- Simplified tax - quarterly;³⁴⁰ and
- Social Insurance - quarterly.³⁴¹

NGOs are required to submit an annual financial report to the MoF no later than April 1 of each year. The forms, content, and procedure of submission of these reports were determined

³³⁶ Ibid.

³³⁷ It provides for 4,000 manat (\$2,600) penalty for submission of false information (Article 403), and 2,500-3,000 manat (\$1,600-\$1,900) for impeding studying activities of NGOs (Article 580).

³³⁸ Article 150 of the Tax Code.

³³⁹ Article 178 of the Tax Code.

³⁴⁰ Article 221.2 of the Tax Code.

³⁴¹ Article 46 of the Guidance of the Social Insurance Fund on collecting mandatory social insurance payments, Ministry of Justice (August 17, 2006), №3235.

by the Cabinet of Ministers.³⁴² Failure to submit the financial report within the deadlines may lead to issuance of a written warning³⁴³ or a penalty to the organization, which in certain cases described above can lead to termination of the organization. The NGO Law requires that NGOs provide a broad range of financial information, in addition to information that they already submit in tax reports. Financial reporting requirements apply even to very small NGOs that do not have any income or assets. However, if a local or foreign NGO performed no financial operations during the year, it can fill-in the template letter in the MoF's electronic system. If this document is submitted, the MoF will release the NGO from the burden of submitting an annual financial report.

If a local or foreign NGO does perform financial operations, it now has to submit two forms (and an explanatory note) online, instead of four which were previously required.

The two reporting forms are difficult for NGOs without an accounting background and small NGOs struggle to complete them or find money to pay for professional help. If an NGO fails to complete the forms on time or completes them incorrectly, it can be fined up to 2,000 manat. For NGOs without income or assets, such a fine would certainly cause them to dissolve. According to the statistics, the number and percentage of NGOs who submitted deficient reports decreases every year. In 2011, the MoF returned 29% (380 out of 1290) of financial reports due to deficiencies, while in 2012 they returned 13% (129 out of 958).

In addition, NGOs are required to register their grants with the MoJ.³⁴⁴ The following documents must be submitted by either NCO-grantee or by the donor to the MoJ within 30 (thirty) days of signing the grant agreement (decision):³⁴⁵

- application;
- copy of the grant agreement (decision) signed by the grantee and donor;
- project description signed by the grantee and donor (this can be a part of a grant agreement as well);
- copy of ID if a donor or grantee is a natural person;
- power of attorney if the application is submitted by a person who is not a legal representative of the submitting entity; and
- financial-economic justification for the grant.

If the documents are issued abroad, they have to be legalized or apostilled as well as translated into Azerbaijani language.

The obligation to register a grant also applies to cases when information about a grant's purpose, amount, or duration changes, or when there is a subgrant or amendment to the

³⁴² Decision № 201 of the Cabinet of Ministers of the Republic of Azerbaijan, December 25, 2009; on 27 January 2015 the Cabinet of Ministers adopted a Decision on simplification of annual financial reports of NGOs, including foreign NGOs (Decision), published on 31 January 2015.

³⁴³ Article 31.6 of the NGO law.

³⁴⁴ Article 4(5) of the Law on Grants.

³⁴⁵ In some situations, grants are made on the basis of a unilateral decision by the donor rather than an agreement.

grant.³⁴⁶ The MoJ should register the grant agreement (decision) within 15 days of submission of the documents and issue a notification of registration, if there are no grounds for suspension or refusal for registration. The MoJ refuses to register grants in the following cases:

- when the documents required for registration of grant agreement are not submitted;
- when the deficiencies are found during the examination;
- when the information provided in the application and (or) attached documents are incorrect; or
- when identified deficiencies are not resolved within five working days.

The legislation prohibits the spending of an unregistered grant and the MoJ may impose administrative sanctions for failure to register grants.

Similar registration requirements exist for NGOs receiving donations and implementing service contracts, when the latter are being procured by foreign entities.

There are additional requirements for humanitarian organizations involved in the dissemination of humanitarian aid to refugees and IDPs.³⁴⁷ The State Program on Improving Living Conditions and the Employment of Refugees and IDPs empowers the State Commission on International Humanitarian Aid to coordinate efforts among humanitarian organizations. For the purposes of coordination, the Commission requires organizations to complete forms describing the humanitarian activities of their organizations. This is typically done at the end of each year, and a letter is usually sent to humanitarian organizations with the required forms.

In addition, foundations are required to undergo annual audits and to submit audit reports to the MoF.³⁴⁸

ANALYSIS

It appears that Azerbaijani legislation provides the MoJ with quite extensive authority to “study” activities of NGOs, which can easily be taken for auditing or investigating. Such broad power applicable to all NGOs is quite unusual and contradictory to international good practice.

³⁴⁶ According to Article 1.5 of the Rules on Registration of Grant Agreements (Decisions) of the Republic of Azerbaijan adopted by the Cabinet of Ministers of the Republic of Azerbaijan on June 5, 2015, the registration documents should be submitted within 30 days of the execution of the grant agreement.

³⁴⁷ The Order of the Cabinet of Ministers of the Republic of Azerbaijan № 376 on International Humanitarian Organizations and Their Representatives Offices in the Republic of Azerbaijan (November 02, 1994, with subsequent amendments as of October 2002).

³⁴⁸ Decision of the Cabinet of Ministers of the Republic of Azerbaijan No. 155 (5 October 2007) "on confirming the terms of phased introduction of the law 'on internal audit' of the Republic of Azerbaijan on economic entities that are objects of mandatory audit."

In addition, financial reporting requirements applicable to all NGOs are excessive, compared to reporting requirements in other European countries. It should be noted that effectively no country in Europe applies the same financial reporting standards (as opposed to tax reporting standards) to all types of NGOs, and nor does the United States.

There is little doubt that reporting is an important aspect of an NGO's activity, as it makes it possible for the public – both as a source of funding and a beneficiary – to understand the activity in which the NGO is engaged. Neither the commercial sector nor citizens will be eager to support an organization they know nothing about. In any country, legal reporting requirements encourage NGOs to increase their transparency by requiring specific types of reporting for specific types of NGOs. Furthermore, whenever it grants special privileges, the government is both entitled and obliged to oversee their use in such a way as to rule out unjustified losses to the budget and therefore unjustified loss of taxpayers' money.

However, it is important to remember that reporting is always a burden for NGOs and the government alike. Legal requirements must be proportionate to an NGO's public worth and privileges (tax benefits, licenses for some special types of activity, government funding, and the like). A government may be spending public funds inefficiently if it introduces complex reporting requirements for organizations that either have no income at all or whose income is insignificant on the national scale (for example, it is comparable in size with that of entities eligible for simplified taxation procedure). As with the business sector, by reducing the scope of reporting, the government does itself a service because it cuts its administrative costs on monitoring the activity of businesses so small that their policing, in view of their vast numbers and very small turnovers, costs more than all the revenue that fines on established offenses may bring. As with the business sector, too, by simplifying reporting for small- and medium-sized NGOs, the government stimulates the development of market relations and the third sector, which as a result can devote more resources to its statutory activity for public benefit. And, on the contrary, cumbersome reporting procedures and high taxes impede the development of the market and the efficiency of the NGO and commercial sectors.

This is true for different types of reporting, be it tax returns, program activities, or financial operations.

In other countries, the majority of NGOs and all other legal entities are required to submit financial reports in connection with and as part of tax reporting. Importantly, NGOs with special tax benefits are usually subject to stricter reporting requirements. For example, charities or public benefit organizations that enjoy the most preferred tax rate of all NGOs must submit a descriptive report about their activity (such as IRS Form 990) in addition to regular tax reporting. In other countries which have no preferred tax status for individual types of NGOs (for example, the Russian Federation), a broad range of NGOs are required to submit financial reports, but all of them must meet certain criteria.

Characteristically, for all the difference in identifying the scope of NGOs required to submit financial reports, both the United States and Russia show a unity of policy that provides for a

differentiated approach to NGO reporting. A category of NGOs is singled out that need not submit any financial reports:

- in the US: if annual income is under \$5,000; and
- in Russia: if annual income is equivalent to less than \$100,000³⁴⁹ and there is no foreign funding or foreign founders.

Some types of organizations may use simplified reporting procedures:

- In the US, there are several methods for reporting, depending on the organization's annual income: (1) up to \$ 25,000 – electronic postcard; (2) \$25,000-\$100,000 – Form 990EZ (simplified); (3) over \$100,000 – Form 990 (regular). Less than 10% of all organizations with the most privileged tax status, known as 501(c)(3), fill out this form.
- In Russia, all NPOs and all community organizations with an income of more than \$10,000 and/or foreign funding qualify for simplified reporting procedures (in addition, they can fill out and submit electronic forms, which greatly facilitates the process both for the NGO and the government agency – the MoJ in this case).³⁵⁰

The requirement under Azerbaijani law for NGOs to file for the registration of grants is not a common practice under international standards. Azerbaijan might benefit from considering simplification of financial reporting requirements for NGOs, and the differentiation approach in terms of specific reporting requirements, taking into consideration international best practice.

6.2. SANCTIONS

Legislation may introduce administrative, civil, and criminal sanctions for associations, as for other entities, in case they are in violation of relevant regulations. These may take the form of fines, the withdrawal of state subsidies or, in extreme cases, the suspension of their activities or their de-registration or dissolution.³⁵¹

³⁴⁹ The exchange rate of Russian ruble to USD, in 2012, which was the intend of the Russian legislature. Presently the equivalent in USD lower, approximately 40,000.

³⁵⁰ See Order #72 of the Ministry of Justice of the Russian Federation On Approving Forms of Reporting for Russian NPOs of March 29, 2010. It should be noted that the above order has significantly simplified NGO reporting forms in comparison with those provided for by Decree #212 of the Russian Federation. Government On Measures to Implement Individual Provisions of Federal Legislation Regulating the Activity of Not-for-Profit Organizations of April 15, 2006.

Order #252 of the Ministry of Justice of the Russian Federation On Internet Posting of Reports about the Activity and Announcements on the Resumption of Activity of Not-for-Profit Organizations of October 7, 2010. Beginning November 2, 2010, representatives of NPOs may post their reports about the activity and announcements on the resumption of activity of not-for-profit organizations in the NPO Reports section of the data portal of the Ministry of Justice of Russia called NPO Portal using links on the Ministry's official web page (<http://www.minjust.ru/>).

³⁵¹ Section 235, Guidelines.

For example, if an association is in breach of a legal requirement to submit financial statements, the first response should be to request rectification of the omission(s); a fine or other small penalty should only be issued at a later date, if appropriate. More generally, any penalties for the late or incorrect submission of reports, or other small offenses, should never be higher or harsher than penalties for similar offenses committed by other entities, such as businesses.³⁵²

No one shall be compelled to belong to an association or be sanctioned for belonging or not belonging to an association.³⁵³

Sanctions amounting to the effective suspension of activities, or to the prohibition or dissolution of the association, are of an exceptional nature. They should only be applied in cases where the breach gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles. In any case, these types of drastic sanctions should ultimately be imposed or reviewed by a judicial authority.³⁵⁴

Associations should not be sanctioned repeatedly for one and the same violation or action. Appeals against sanctions imposed should have the effect of suspending the enforcement of sanctions until the appeals are completed. This avoids situations in which lengthy appeal procedures lead to the quasi-disappearance of the association due to frozen accounts or high penalties, even where the appeal is ultimately successful. In cases concerning grave crimes or relating to national security, it is reasonable not to suspend sanctions during appeal procedures, however. The burden of proof for violations leading to sanctions should always be on the authorities.³⁵⁵

A suspension should always be a temporary measure that does not have a long and lasting effect. A lengthy suspension of activities would otherwise effectively lead to a freezing of the operations of an association, resulting in a sanction tantamount to dissolution.³⁵⁶

In case of non-compliance with requirements on reporting, the legislation, policy, and practice of the state should provide associations with a reasonable amount of time to rectify any oversight or error. Sanctions should only apply in cases where associations have committed serious infractions and should always be proportional. The prohibition and dissolution of associations should always be measures of last resort.³⁵⁷

AZERBAIJANI LAW

³⁵² Section 237, Guidelines.

³⁵³ Section 28, Guidelines.

³⁵⁴ Section 239, Guidelines.

³⁵⁵ Sections 240-241, Guidelines.

³⁵⁶ Section 255, Guidelines.

³⁵⁷ Section 234, Guidelines.

The Criminal Code has a chapter concerning criminal liability of legal entities, including NGOs, for certain criminal acts (some of which are listed below), in case managers of legal entities commit crimes “in favor of a legal entity or in order to protect its interests.” The following types of penalties will be applied to legal entities:

- fine (reaching 200,000 manat or five times the amount of the damage caused (or revenue obtained) by the criminal activities);
- special confiscation of property;
- deprivation of the right of a legal entity to be engaged in certain activity; and
- dissolution of a legal entity (dissolution is accompanied by 200,000 manat fine with certain exceptions).

The list of crimes for which criminal liability of legal entities is applicable is rather broad and includes, among others crimes, treason; public incitements against the state; incitement of national, racial, social or religious hatred and enmity; revealing state secrets; corruption; organizing riots; organization of actions promoting infringement of public order or active participation in such activities; as well as forcing to join or remain in a political party.³⁵⁸

All legal entities are subject to penalties for violations of tax, social insurance, licensing and other legislation.

NGOs are subject to additional administrative penalties for non-compliance with legislation regulating their activities (registration and use of grants, donations, service contracts, financial reporting requirements, etc.). Below are key offenses specific to NGOs activities and the penalties for such offenses:

- Failure of an NGO to register a grant is punishable with a fine of up to 5,000-7,000 manat (\$2,940-\$4,100) for legal entities and up to 1,000-2,500 manat (\$590-\$1,470) for NGO managers.³⁵⁹
- Receiving any financial or material aid that is not a donation without a grant contract³⁶⁰ is punishable by the confiscation of unregistered grant or assets from the recipient NGO. In addition, such NGOs will be subject to fine in the amount of 8,000-15,000 manat (\$4,700-\$8,820), and NGO managers will be subject to fines of 2,500-5,000 manat (\$1,470-\$2,940). These penalties apply to local NGOs as well as to representative and branch offices of foreign NGOs.³⁶¹

³⁵⁸ See Article 99-4.6 of the Criminal Code.

³⁵⁹ Article 432 of the Administrative Code.

³⁶⁰ According to Azerbaijani legislation, a grant contract shall be concluded in written form, with the names and contact information for the parties to the contracts. In order for the contract to be registered with the Ministry of Justice, the grant contract and project proposal shall be apostilled or legalized (if issued abroad), and translated into Azeri. The punishment applies if there is no written contract, meeting the minimal requirements stipulated above.

³⁶¹ Article 432.3 of the Administrative Code.

- NGOs as well as representative and branch offices of foreign NGOs³⁶² are subject to fines of 5,000-8,000 manat (\$2,940-\$4,700) for failure to include information about the amount of the donation and the donation's source in financial reports submitted to the MoF. For NGO managers, the penalty is 1,500-3,000 manat (\$880-\$1,765).³⁶³
- Any person or entity that provides a cash donation to an NGO (including to a representative or branch office of a foreign NGO) is subject to the following fines: 250-500 manat (\$147-\$294) for natural persons, 750-1,500 manat (\$441-\$882) for managers of legal entities, and 3,500-7,000 manat (\$2,059-\$4,117) for legal entities.³⁶⁴
- NGOs (including representative and branch offices of foreign NGOs) receiving cash donations are subject to fines of 1,000-2,500 manat (\$588-\$1,470), while managers are subject to fines of 7,000-10,000 manat (\$4,117-\$5,882). This excludes an NGO whose primary statutory goal is charity and whose cash donations amount to less than 200 manat (\$117).³⁶⁵ The law does not clarify whether the 200 manat exception applies to a one-time cash transaction or is a cumulative amount per donor.
- Failure to submit and/or to publish mandatory financial reports is punishable with a fine of 1,500-2,000 manat (\$882-\$1,176).³⁶⁶
- Evasion of the mandatory (statutory) audit by a foundation is punishable with penalty of 300-600 manat (\$176-\$353) for officials and 1,500-2,500 manat (\$882-\$1,470) for foundations.³⁶⁷
- Submission of false information for the state registration of legal entities is punishable with a penalty of 700 manat (\$412) for individuals and 4,000 manat (\$2,353) for legal entities.³⁶⁸

According to Article 31 of the NGO Law, “In case of a violation of requirements arising from provisions of this law, a non-governmental organization shall bear responsibility in accordance with the legislation of the Republic of Azerbaijan.” As explained above, Article 31 also provides that an NGO may be involuntarily liquidated by court decision for taking actions “that contradict the objectives of this law” on two occasions in one year, but only after written notice and with the right to appeal. According to the MoJ's statistical information concerning grant registration by NGOs in 2012, seven administrative proceedings were instituted against six organizations, and two administrative penalties were enforced that resulted in total of 2,000 manat in fines for not registering grants.³⁶⁹

³⁶² According to Azerbaijani Law on Grants, representative offices and branches of foreign NGOs may receive grants.

³⁶³ Article 465 of the Administrative Code.

³⁶⁴ Article 466.1 of the Administrative Code.

³⁶⁵ Article 466.2 of the Administrative Code.

³⁶⁶ Article 462 of the Administrative Code.

³⁶⁷ Article 464 of the Administrative Code.

³⁶⁸ Article 403 of the Administrative Code.

³⁶⁹ Consolidated information on grants agreements received and granted by non-profit organizations for the year 2012, available at: www.justice.gov.az/notariat.php?page=2014.

Fines for NGOs are substantially higher compared to fines for similar offenses for businesses and individuals, as provided in the Administrative Code. Article 247 provides a fine for violation of the requirements to provide documents related to the calculation of taxes in the amount of 25-30 manat for individuals and of 40-60 manat for managers of legal entities.

ANALYSIS

The high penalties against NGOs appear to be excessive and disproportionate, compared to the nature of offenses. They also appear to be discriminatory when compared with penalties for similar offenses committed by business entities and individuals. The public danger caused by failure to register a grant is not in any way higher than violations of tax reporting requirements.

7. TRANSPARENCY AND ACCOUNTABILITY

The state should maintain a database of registered associations that is accessible to the public, with due consideration for data protection principles and the right to associational privacy. In order to ensure public accountability, statistical information on the number of accepted and rejected applications should also be made available.³⁷⁰

The resources received by associations may legitimately be subjected to reporting and transparency requirements. However, such requirements shall not be unnecessarily burdensome, and shall be proportionate to the size of the association and the scope of its activities, taking into consideration the value of its assets and income.³⁷¹

As a rule, public funding should be allocated through a transparent procedure and be accompanied by a broad informational campaign delivered to all potentially interested associations. When the allocation of funding is made through a competitive process, the evaluation of applications for public funding should be objective and based on clear and transparent criteria, developed for the competition and publicized in advance. The results of evaluation processes should be made available to the public, as should information concerning the applications of associations that did not receive funding, specifying the reasons for awarding funding to some projects and not to others. Associations' right to privacy in this respect should be maintained, however.³⁷²

Insofar as associations utilize public funding to achieve their goals and objectives, legislation may establish guidelines to ensure that tax payers have access to information regarding the statutes, programmes, and financial reports of associations. The publication of such documents may be considered necessary to ensure an open society and prevent corruption.

³⁷⁰ Section 164, Guidelines.

³⁷¹ Section 104, Guidelines.

³⁷² Section 211, Guidelines.

However, any such reporting requirements should not create an undue and costly burden on associations and should also be proportional to the amount of funding received.³⁷³

Reporting should be facilitated by the creation of, for example, online web portals where reports can be published, so long as this does not overburden the association. Reporting requirements should not be regulated by more than one piece of legislation, as this can create diverging and potentially conflicting reporting requirements and, thus, diverging liability for failure to fulfil them. Finally, associations should not, to the extent possible, be required to submit the same information to multiple state authorities; to facilitate reporting, the state authorities should seek to share reports with other departments of the state if necessary.³⁷⁴

There may be situations where audits (understood as the verification of an association's financial and accounting records and supporting documents provided by an independent professional) are required by donors. At least in cases where associations receive public funding, it may be necessary to provide them with adequate funds to conduct such audits, regardless of whether the funds are from a public or private source. States should assist by providing funds for such audits in cases where associations have difficulties in carrying them out.³⁷⁵

AZERBAIJANI LAW

According to Article 29 of the NGO Law, “An NGO shall maintain accounting in accordance with the legislation. Information about amount and structure of an NGO's income, as well as information about its property, expenses, number of staff, and salaries, shall not be a state or commercial secret. Foundations shall be obliged to publish annual reports about their use of property.”

In practice, NGOs rarely volunteer to post information about their finances and activities for public review.

The Registration Law explicitly grants public access to information in the State Registry as well as extracts and copies of documents submitted for registration of NGOs. The MoJ is required to provide any interested party with information on whether or not an organization is registered.³⁷⁶ The Registration Law also requires that information on the registration of legal entities be published in the official state newspaper.³⁷⁷ Notwithstanding these public access requirements, currently, this Registry is only easily available to the staff of the MoJ. Information about NGOs is available to the public only upon request by written application.

NGOs' financial reports submitted to the MoF are also not available to the public.

³⁷³ Section 226, Guidelines.

³⁷⁴ Section 227, Guidelines.

³⁷⁵ Section 232, Guidelines.

³⁷⁶ Article 18.1 of the Registration Law.

³⁷⁷ Article 18.2 of the Registration Law.

NGOs submit reports on their activities and finances to their donors, primarily foreign organizations providing grants, and to the tax authorities. However, it is not a common practice for an Azerbaijani NGO to publish an annual report, which would make public basic information about the NGO's activities, property, expenses, employees, and salaries.

The majority of Azerbaijani NGOs have not adopted mechanisms for self-regulation, and many do not employ conflict of interest or other internal governance policies.

ANALYSIS

The NGO Law requires that NGOs disclose information on their activities to the public. In general, this requirement conforms to international best practices. The lack of implementation of the requirement is mostly detrimental to the NGOs themselves.

In many countries, the public plays an important supervisory role over NGO activities. The public's trust is reflected in its support to NGOs. State authorities usually conduct inspections only when the public reports violations either through mass media or by other means. Consequently, the public should receive information on organizations' activities from the state, news media, and from the organizations themselves. It appears that in Azerbaijan, none of these information sources are effective.

Consideration might be given to making NGO reports on their finances and activities which are already being submitted to the government authorities available to the public in part or in whole. In addition, donors and NGOs themselves might consider encouraging transparency and openness to the public.

II. List of Materials Used in the Assessment

INTERNATIONAL LAWS, AGREEMENTS, AND DOCUMENTS:

1. The Universal Declaration of Human Rights (1948).
2. The European Convention on Human Rights, adopted by the Council of Europe in Rome (November 4, 1950) with its Five Protocols (adopted in Paris March 20, 1952; Strasbourg May 6, 1963, Strasbourg May 6, 1963, Strasbourg September 16, 1963, and Strasbourg January 20, 1966).
3. The International Covenant on Civil and Political Rights (1976).
4. The Agreement between the Government of the United States of America and the Government of the Republic of Azerbaijan regarding cooperation to facilitate the provision of assistance (May 11, 2000; ratified by Azerbaijan July 18, 2000).
5. Partnership and Cooperation Agreement with the European Union and the EU member countries, with the Republic of Azerbaijan, №837IIQ (March 1, 2005; published in the official newspaper of Azerbaijan March 29, 2005).
6. The European Convention on Recognizing the Legal Personality Status of International NGOs (April 24, 1986; effective January 1, 1991).
7. European Union Council Directive No. 6 on the VAT (May 17, 1977).
8. Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers' Deputies.
9. Resolution 1917 (2013) of the Parliamentary Assembly of Council of Europe on "The honouring of obligations and commitments by Azerbaijan", available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19451>
10. Resolution 345 of the Congress of Local and Regional Authorities of the Council of Europe <https://wcd.coe.int/ViewDoc.jsp?id=1992611>
11. Recommendation 326 (2012) "Local and regional democracy in Azerbaijan" of the Congress of Local and Regional Authorities of the Council of Europe <https://wcd.coe.int/ViewDoc.jsp?id=1992611>
12. Joint Guidelines on Freedom of Association (OSCE/ODIHR and CoE, 2016) at <http://www.osce.org/odihr/132371?download=true>
13. The functioning of democratic institutions in Azerbaijan, Doc. 11627, 6 June 2008, Report, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), available at <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileId=12114&Language=en>
14. *Ramzanova and Others v. Azerbaijan*, Eur. Ct. H.R. (application no. 44363/02, February 1, 2007).
15. *Sidiropoulos and Others v. Greece*, 4 Eur. Ct. H.R. 500 (1998).
16. *United Communist Party v. Turkey*, 4 Eur. Ct. H.R. 1 (1998).
17. *Ismayilov v. Azerbaijan*, (application no.4439/04, January 17, 2008).
18. Press release on *Ramzanova and Others v. Azerbaijan*.
19. *Tebieti Mühafizə Cəmiyyəti and İsmayilov v. Azerbaijan*, (application no. 37083/03, 8 October 2009).

20. *Islam-Ittihad Association and Other v Azerbaijan* (application no. 5548/05, 13 February, 2015).

LAWS AND LEGISLATIVE ACTS³⁷⁸:

1. The Constitution of the Republic of Azerbaijan (November 12, 1995).
2. The Civil Code of the Republic of Azerbaijan (December 28, 1999)
3. The Tax Code of the Republic of Azerbaijan (July 11, 2000).
4. Code on Administrative Offenses of the Republic of Azerbaijan (December 29, 2015).
5. Criminal Code of the Republic of Azerbaijan (January 31, 2005).
6. The Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Associations and Foundations) (June 13, 2000).
7. The Law of the Republic of Azerbaijan on the State Registration and State Register of Legal Entities (December 12, 2003).
8. The Law of the Republic of Azerbaijan on Grants (17 April 1998).
9. The Law of the republic of Azerbaijan on Public Participation (22 November 2013).
10. The Law of Republic of Azerbaijan on State Procurement (December 2001).
11. The Law of the Republic of Azerbaijan on the National Youth Policy (April 2002).
12. The Law of the Republic of Azerbaijan on Obtaining Information (September 30, 2005).
13. The Law of the Republic of Azerbaijan on Insolvency and Bankruptcy (June 13, 1997).
14. The Law of the Republic of Azerbaijan on Social Insurance (February 1997).
15. The Law of the Republic of Azerbaijan on Lotteries (March 5, 2004).
16. The Order of the Cabinet of Ministers of the Republic of Azerbaijan № 376 on International Humanitarian Organizations and Their Representatives Offices in the Republic of Azerbaijan (November 02, 1994).
17. The Rules on obtaining the right to provide grants in the Republic of Azerbaijan by foreign donors, adopted by the Cabinet of Ministers of the Republic of Azerbaijan on October 22, 2015, and entered into force with their publication on December 04, 2015.
18. The Rules on Registration of Grant Agreements (Decisions) of the Republic of Azerbaijan adopted by the Cabinet of Ministers of the Republic of Azerbaijan on June 5, 2015.
19. Rules on Registration of Service Contracts on Provision of Services or Implementation of Works by NGOs, as well as by Branches or Representative Offices of Foreign NGOs, from Foreign Sources, adopted by the Cabinet of Ministers of the Republic of Azerbaijan on October 21, 2015.
20. The Decree of the President of the Republic of Azerbaijan ‘On application of ‘single-window’ principle in procedure for issuance of grants in the territory of the Republic of Azerbaijan by foreign donors’, October 21, 2016.

³⁷⁸ The law and regulations are provided as of 1 July 2017.

21. Rules on submission of information about amount of donation received by NGOs as well as by branches or representations of NGOs of foreign states and about the donor, adopted by the Cabinet of Ministers of the Republic of Azerbaijan on 21 October 2015.
22. Charter of the Regional Branches of the Ministry of Justice of the Republic of Azerbaijan (approved by the President of the Republic of Azerbaijan on April 7, 1997) №571.
23. The Decree of the President of the Republic of Azerbaijan on Implementation of the Law on State Registration of Legal Entities and State Registry” (April 12, 2004).
24. The Decree of the President of the Republic of Azerbaijan on Development of Justice Organs (came into force August 18, 2006).
25. The Decree of the President of the Republic of Azerbaijan on Approval of the Agreement between the USA and the Government of the Republic of Azerbaijan Regarding Cooperation to Facilitate the Provision of Assistance (published in the official newspaper of Azerbaijan, August 17, 2000).
26. Law № 560-IVQD "on amendments to the law of the Republic of Azerbaijan "On Grant"" (February 15, 2013).
27. Law № 561-IVQD "on amendments to the law of the Republic of Azerbaijan on Non-Governmental Organizations (public associations and foundations)" (February 15, 2013).
28. Law № 563-IVQD "on amendments to the Code of Administrative Offenses of the Republic of Azerbaijan" from (February15, 2013).
29. Decision of the Constitutional Court of the Republic of Azerbaijan from April 15, 2011 (on interpretation of the law “on psychiatric assistance”), available at www.constcourt.gov.az/decisions/197.
30. Decision of the Constitutional Court of the Republic of Azerbaijan from May 11, 2004 (on consideration of individual complaint of E. Alizada and others), available at www.constcourt.gov.az/decisions/81.
31. Decree of the President of the Republic of Azerbaijan “on application of the law of the Republic of Azerbaijan "on state registration and state registry of legal persons" № 48 from April 12, 2004.
32. Decree of the President of the Republic of Azerbaijan № 571 from January 20, 2012.
33. Rules On conducting negotiations for preparation and signing of an agreement for the state registration of branches or representations of foreign non-governmental organizations in the Republic of Azerbaijan, approved by the Decision № 43 of the Cabinet of Ministers of the Republic of Azerbaijan on March 16, 2011 (hereinafter referred to as “Rules for Registration of Offices of Foreign NGOs”).
34. Law № 314-IVQD on amendments to the Criminal Code of the Republic of Azerbaijan, from March 7, 2012.
35. Law № 461-IVQD on amendments to the Criminal Code of the Republic of Azerbaijan from November 2, 2012
36. Law № 495-IVQD on amendments to the Criminal Code of the Republic of Azerbaijan from December 11, 2012
37. Law № 842-IIIQD from June 30, 2009

38. Presidential Decree № 542 (December 19, 2011).
39. Presidential Decree № 801 (December 29, 2012).
40. Decision № 38 of the Cabinet of Ministers of the Republic of Azerbaijan (March 7, 2013)
41. Presidential Order № 2806 “On additional measures of support to the activity of the Youth Fund under the President of the Republic of Azerbaijan” (March 18, 2013).
42. Law of the Republic of Azerbaijan “on Social Service” № 275-IVQ, December 30, 2011
43. Cabinet of Ministers Decision № 328 "on rules of provision social services at homes and state social service institutions on a paid and partially paid basis" (December 30, 2013).
44. Cabinet of Ministers Decision № 330 "on approving rules of providing state orders in the area of social services to municipalities, physical and legal entities, including non-governmental organizations" (December 30, 2013).
45. Presidential Decree № 758 (November 29, 2012) on additional measures with regard to the implementation of the Social Service Law.
46. Presidential order № 2653 (January 9, 2013)
47. Law № 574-IVQD "on amendments to the law of the Republic of Azerbaijan "on voluntary activities" (February 22, 2013); Presidential Decree № 830 (February 15, 2013) amending the Regulations of the MoLSPP.
48. Cabinet of Ministers Decision № 17 (January 31, 2013) approving the "Rules for provision of (mobile) social services at homes.”
49. Decision № 201 of the Cabinet of Ministers of the Republic of Azerbaijan (December 25, 2009).
50. The French Law on the Contract of Associations (July 1, 1901 with subsequent amendments as of 12 June 2001).
51. The French Decree of August 16, 1901 (with subsequent amendments as of 24 April 1981).
52. The Belgian Law on Non-profit Associations, International Associations, and Foundations (May 2, 2002).
53. The German Civil Code.
54. The French Tax Code.

BIBLIOGRAPHY

1. Joint Guidelines on Freedom of Association (OSCE/ODIHR and CoE, 2016) at <http://www.osce.org/odihr/132371?download=true>
2. The 2015 CSO Sustainability Index Report for Central and Eastern Europe and Eurasia, available at: https://www.usaid.gov/sites/default/files/documents/1861/Europe_Eurasia_CSOSIRReport_2015_Update8-29-16.pdf
3. CSO Law Monitor: Azerbaijan <http://www.icnl.org/research/monitor/azerbaijan.html>
4. Country Reports on Human Rights Practices 2016, U.S. State Department, Bureau of Democracy, Human Rights, and Labor (2016), available at: <https://www.state.gov/documents/organization/265608.pdf>
5. Douglas Rutzen, David Moore, and Michael Durham, *The Legal Framework for Not-for-Profit Organizations in Central and Eastern Europe* (2009)
6. Leon Irish and Douglas Rutzen, *Re-Registration Revisited IJNL*, Issue 3 (1999), available at www.icnl.org/journal/journal.html.
7. Anar Kazimov and Hafiz Hasanov, *Report on the Registration Procedures of Non-Governmental Organizations* available at: www.osce.org/baku/14613.
8. Jerome Gallagher and Vagif Hasanov, "Local Civic Engagement Assessment for Azerbaijan" (March 2006).
9. Survey of Tax Laws Affecting NGOs in the Newly Independent States, ICNL (February 2004).
10. Survey of Tax Laws affecting NGOs in Central and Eastern Europe, Second edition, ICNL (October 2003).
11. Fabrice Suplisson, *Overview of Program and Finance Reporting Requirements for NGOs* (2012)
12. ECNL for the Council of Europe, *Civil Participation in Decision Making Process: An Overview of Standards and Practices in Council of Europe Member States* (2016). <http://ecnl.org/publications/civil-participation-in-decision-making/>
13. Fabrice Suplisson, *Denial of Registration and Involuntary Liquidation of Associations: Overview of French Case Law*, ICNL.
14. Public Funding for Civil Society Organizations; Good Practices in the European Union and Western Balkans (prepared by ECNL, commissioned by TACSO Montenegro Office; 2016)
15. Public Funding for Civil Society Organizations. Good Practices in the European Union and Western Balkans (by ECNL commissioned by TACSO Montenegro Office, 2011) <http://www.icnl.org/research/resources/ngogovcoop/engb54.pdf>.
16. Report 2016 Nations in Transition: Azerbaijan, Freedom House, available at <https://freedomhouse.org/report/nations-transit/2016/azerbaijan>