



№ 293 /13/N

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to transmit herewith the response received from the Milli Mejlis (Parliament) of the Republic of Azerbaijan regarding the communication Ref. Nr. AZE 5/2012 dated 10 December 2012.

The Permanent Mission requests the Office to share the enclosed information with the relevant mandate holders of the Human Rights Council.

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights, the assurances of its highest consideration.

Enclosure: 3 pages.

Geneva, 16 August 2013

THE OFFICE OF THE UN HIGH
COMMISSIONER
FOR HUMAN RIGHTS
GENEVA



ANNEX

1. Are the facts as stated accurate in respect of the amendments to the Code on Administrative Offences and the Criminal Code?

We would like to note with regret that the information contained in the joint communication of Special Rapporteurs dated 10 December 2012 are not accurate in most cases, distorted or erroneously interpreted.

Neither the Criminal Code, nor the Code on Administrative Offences, nor the Law on Freedom of Assembly, as well as the amendments to these legislative acts do not envisage that if the location, timing and route have not been agreed with the authorities the gathering is regarded as unlawful.

The main objective of the amendments to the Criminal Code and the Code on Administrative Offences is to strengthen the responsibility for the relevant actions, to be more precise – to increase the amount of the defined fines. Naturally, the criminal responsibility cannot emerge for holding the peaceful assembly without prior notification of the relevant authority. What matters here is the administrative responsibility.

The amendments to the Law on Freedom of Assembly are of technical nature and they are not interconnected with the ones made to the Criminal Code and the Code on Administrative Offences.

The content of the article 169, para. 1 of the Criminal Code is distorted in the communication of Special Rapporteurs. In fact, this clause stipulates that “In cases of prohibition by the legislation, the organization of a gathering, conduct and participation in such gatherings, if causes the significant violation of the rights and legal interests of citizens, are punished by a fine from 5.000 to 8.000 Manats or correctional work for up to two years or deprivation of liberty for up to two years”.

First of all, as mentioned above, the expression “an unlawful gathering” was not used in the Criminal Code. According to the mentioned article of the Code, two cases must be in place for the criminal responsibility to emerge:

1. Gathering is held in cases of having been prohibited by the law. Such cases prohibited by the Law on Freedom of Assembly are very limited (article 8, para I-III). In other words, for the objectives of the Article 169, para 1, the expression “in cases of prohibition by the legislation” and the term “in cases of prohibition by the relevant authority” should be differentiated.

2. Such a gathering should lead to the significant violation of the rights and legal interests of citizens.

Secondly, the amendments to the Article 169 of the Criminal Code, as mentioned above, are related to increasing fine sanctions. The criminalization of any action is out of context here.

We would like to draw the attention of Special Rapporteurs to the fact that expression “unauthorized gathering” was not and cannot be used in the Criminal Code and the Code on Administrative Offences. As the paragraph II of the Article 49 of the Constitution of the Republic of Azerbaijan stipulates that “Everyone has the right, *having notified* respective governmental bodies *in advance*, peacefully and without arms, meet with other people, organize meetings, demonstrations, processions, place pickets”. In accordance with that, the issue in the article 5, para I of the Law on Freedom of Assembly is not about the authorization, but namely notification. This law stipulates (article 7, para. IV) that the freedom of peaceful assembly “can be restricted in various forms, including in the form of the change of the time and venue, the route of an assembly” in accordance with the objectives contained in the paragraph I of the same article (article 11, para. II of the European Convention for the Protection of Human Rights and Fundamental Freedoms).

We commend the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association to the Human Rights Council (A/HRC/20/27) and especially the views referred in the letter. We would like to emphasize that these principles and clauses are unequivocally reflected in the legislation of Azerbaijan.

As seen from the brief comments to the Article 169 of the Criminal Code, no one can be held criminally accountable for the exercise of the right to freedom of peaceful assembly and of association. We are of the view that the organization of assemblies propagandizing national, racial or religious discord and the infliction of considerable damage on the rights and legal interests of other persons in such a case should not be qualified as the exercise of freedom of peaceful assembly, but as the abuse of this freedom.

The exercise of the freedom of peaceful assembly does not depend on any authorization. The notification procedure was defined in the Constitution of the Republic of Azerbaijan in 1995.

According to the Article 10 of the Law on Freedom of Assembly, “Decisions of the relevant bodies of executive power about assemblies must be brought to organizers of the event in written no later than 3 working days prior to the intended date of the event and these decisions shall be clear and grounded”. The Article 11 stipulates that decisions can be appealed against in a relevant court. A complaint shall be considered by court within 3 days. Court decisions on these complaints can be appealed before superior courts.

Finally, we would like to note the paragraph IV of the Article 5 of the Law concerning spontaneous (fortuitous) assemblies – “For fortuitous assemblies submission of a written notification is not required. Fortuitous assemblies in

accordance with the requirements specified in Article 7 and 8 of the present Law can be restricted or suspended”.

2. If and how in the process leading to the adoption of the amendments, consideration was given to international human rights standards concerning the rights to freedom of peaceful assembly?

The legal expertise was carried out on the draft law concerning the amendments to the Criminal Code and the Code on Administrative Offences, as all draft laws on the protection of human rights. This flows from the requirements of the Constitution Law (Chapter IX) of the Republic of Azerbaijan on “Normative legal acts” dated 21 December 2010. The compliance of the draft with the Constitution of Azerbaijan and the international agreements wherein the Azerbaijan Republic is one of the parties, has been examined and only after that it was submitted to the consideration of Milli Mejlis (Parliament). The expertise concluded the non-contradiction of the mentioned amendments with the international standards on human rights.

Strengthening the responsibility in the Criminal Code and the Code on Administrative Offences corresponds to increasing fine sanctions defined in the legislation of the Republic of Azerbaijan. It should be reminded that administrative fine of 7-13 Manats had been defined before that in the Article 298 of the Code on Administrative Offences.

Finally, we would like to point out that the current text of the Law on Freedom of Assembly was prepared jointly with the experts of the Council of Europe. This Law was highly rated by the Council of Europe's advisory body – the Venice Commission (European Commission for Democracy through Law). The conformity of the Law with the European standards was emphasized in the Opinion of the Commission dated 17 December 2007.
