

NATIONS UNIES
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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association;
the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the situation
of human rights defenders.**

REFERENCE: AL Assembly & Association (2010-1) G/SO 214 (56-23) G/SO 214 (107-9)
AZE 3/2013

28 March 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/21, 14/11, and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning amendments to the **Code of Administrative Offences, the law "on non-governmental organizations (public associations and foundations)", and the law "on grants"** which will affect the work of religious organizations and non-governmental organizations (NGOs), including those working for the promotion and protection of human rights.

According to the information received:

On 15 February 2013, the Parliament of the Republic of Azerbaijan adopted new amendments to the Code of Administrative Offences, the law "on non-governmental organizations (public associations and foundations)", and the law "on grants" which will reportedly obstruct the work of NGOs and religious organizations and will have a detrimental impact on the exercise of the right to freedom of association in the country.

The new legislative changes imply increased penalties for violation of the requirement to register grants with the Ministry of Justice. They also introduce liability (fines and confiscation) for carrying out activities under a grant in the absence of a grant agreement. Moreover, amendments only allow donations in cash in the amount of up to 200 AZN, if the recipient is an NGO that has charitable activities indicated as a primary statutory purpose.

According to the information received, the mentioned amendments include the following:

Amendments to the Code of Administrative Offences

Increased penalties for violation of the requirement of registering grants at the Ministry of Justice. Amendments to article 223-1 of the Code of Administrative Offences include an increase of the administrative fine for NGOs that do not register a grant with the Ministry of Justice within the established period of one month. Fines will reportedly increase from 1,000-2,500¹ AZN (formerly envisaged) to 5,000-7,000 AZN, and for NGO officials an additional fine of 1,500 to 2,500 AZN is envisaged.

Such an increase in the penalty does not appear justified given that the fine currently in force is already a serious penalty. Moreover, reports received indicate that the current penalty is already greater than the amount of fines for similar offenses for businesses and individuals provided for in the Code of Administrative Offences.

Furthermore, amendments to article 223-1 of the Code of Administrative Offence have added a new provision (223-1.3) introducing liability (fines and confiscation) for carrying out activities funded by a grant in the absence of a grant agreement. According to this new provision, religious organizations and NGOs, including branches and representatives of foreign NGOs, carrying out activities funded by a grant in the absence of a grant agreement will be punished with 8,000-15,000 AZN, and their officers with 2,500-5,000 AZN fines. In addition, the grant funds must be seized.

Amendments to the law “on non-governmental organizations (public associations and foundations)”

Changes introduced to article 24 of the law “on non-governmental organizations (public associations and foundations)” include a new section (24.1) establishing a definition of donation (24.1.1), which was previously absent from the legal framework of the country.

This new provision also states that “(...) a non-governmental organization that has charity indicated as a primary purpose in its charter can receive up to two hundred AZN donations in cash”. Therefore, donations in cash in the amount of up to 200 AZN are allowed if the recipient is an NGO that has charitable activities indicated as a primary statutory purpose.

¹ 1 manat (AZN) = 1.27 USD

According to reports received, the implementation of the new amendment could be problematic. As per the new changes, only those NGOs whose statute literally states that the main goal of their work is charity could accept donations in cash and, according to the information received, there are not many of such organizations in Azerbaijan. It is reported that the statute of many NGOs that are in practice working exclusively as charities, state as purpose the conduct of activities in specific social areas (environment, disability) but not charity in general.

Amendments to the law “on grants”

” (Compilation of laws of the Republic of Azerbaijan, 1998, № 6, article 366; 2001, № 12, article 736; 2002, № 12, article 706; 2003, № 1, article 1; 2009, № 8, article 611)

The amendments read “Except for donations and aid by state bodies provided for by the Laws of the Republic of Azerbaijan “on religious belief” and “on non-governmental organizations (public unions and foundations)”, religious organizations, non-governmental organizations including the representations and branches of foreign non-governmental organizations operating in the Republic of Azerbaijan cannot receive aid in a form of financial means and (or) other material form without a grant contract (decision)”.

It is claimed that the above-mentioned amendments aim at securing “transparency in the reception and usage of donations to non-governmental organizations (NGOs) [and religious organizations], as well as enforcement of international obligations of the Republic of Azerbaijan in the field of prevention of money laundering of proceeds of crime.”

However, it has been reported that the legislative changes were submitted hastily to the Parliament without due consultation with civil society organizations. This would reportedly be contrary to the spirit of the Law on Normative Legal Acts, which states that the transparency of the activities of bodies adopting legal acts are guaranteed through publishing draft of the acts in the web-site of the relevant body (article 18) and that open discussions (public or professional) may be organized upon decision of the same body proposing the draft law (article 19).

It is further reported that, shortly after the introduction of the mentioned amendments, the Head of the Presidential Administration made stigmatizing remarks accusing foreign donors of “unlawfully” financing NGOs in Azerbaijan and of interfering in internal affairs.

Concern is expressed that the amendments to the above-mentioned legal texts will negatively affect the work of religious organizations and civil society organizations (CSOs), including those working for the promotion and protection of human rights, and

will have a detrimental impact on the right to freedom of association. Concern is also expressed that the legislative changes were reportedly not properly discussed with civil society organizations. Moreover, concern is expressed at allegations that high-ranking Government officials have made stigmatizing remarks against the work of NGOs, particularly those NGOs financially supported by foreign donors, in the country.

If confirmed, these allegations indicate a broader context of increasing pressure and intimidation against NGOs and human rights defenders in Azerbaijan, particularly for those who operate with the support of international donors.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international standards that are applicable to the issues brought forth by the situation described above.

We would like to remind your Excellency's Government of article 22 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

Similarly, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

In addition, we would like to highlight the first thematic of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27), which provides that "[a]ssociations should be able to access domestic and foreign funding and resources without prior authorization" (para. 99).

Furthermore, we would like to draw attention of your Excellency's Government to the General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55), in its article 6 paragraphs (b), (f) and (i) which provides that the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms: "to establish and maintain appropriate charitable or humanitarian institutions, to solicit and receive voluntary financial and other contributions from individuals and institutions, as well as to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels."

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

We would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations; and

- article 12 paras. 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate how the mentioned amendments to the Code of Administrative Offences, the law “on non-governmental organizations (public associations and foundations)”, and the law “on grants” are compatible with international human rights law and standards, notably the International Covenant of Civil and Political Rights.

3. Please indicate what measures have been taken to ensure that the right to freedom of association is duly respected in compliance with the aforementioned international human rights norms and standards, and that religious organizations and CSOs, including those working on human rights issues, are able to carry out their legitimate work in a conducive and enabling environment.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms above mentioned are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

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of association

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