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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**COMMENTS**

**ON THE COMPATIBILITY WITH HUMAN RIGHTS STANDARDS  
OF THE LEGISLATION ON NON-GOVERNMENTAL  
ORGANISATIONS**

**OF THE REPUBLIC OF AZERBAIJAN**

**by**

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## **On the compatibility with human rights standards of the legislation on NGOs of the Republic of Azerbaijan**

**by Herdís Thorgeirsdóttir**

### **I. Introduction**

1. The Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe has asked the VC to assess the compatibility with human rights standards, including the case law of the EctHR, of the Legislation of Azerbaijan of Freedom of Association, and more precisely the Law on Non-Governmental Organizations (CDL-REF (2011)049) as amended in 2009 and the Decree No. 43 of 16.03.2011 (CDL-REF (2011)048), the regulations of the Cabinet Ministers adopted to ensure the implementation of this amended law.

### **II. Preliminary Observations**

2. The Council of Europe Parliamentary Assembly's rapporteur on "The situation of human rights in the Council of Europe's member states" had been informed by several prominent NGOs that the registration of international NGOs branches in Azerbaijan had become subject to numerous arbitrary conditions and thus more difficult.

3. The contested aspect of the amendments of the Law on NGOs is the requirement of all international NGOs or their local affiliates in Azerbaijan to sign separate agreements with the government in order to be allowed to operate. In particular any foreign NGO has to reach an "agreement" with the authorities and before it is reached the organisation has to respect national moral values (which are not legally defined) and must not be involved in "political or religious propaganda."<sup>1</sup>

4. The present opinion is to assess the compatibility of the 2009 NGOs legislation with the Republic of Azerbaijan's international human rights obligations. The Republic of Azerbaijan became a member state of the Council of Europe (hereinafter CoE) on 25 January 2001. It ratified the European Convention on Human Rights (hereinafter ECHR) on 15 April 2002 and it ratified the International Covenant on Civil and Political Rights (hereinafter ICCPR) on 13 August 1992.

### **III. Background information and facts**

5. Under the 2009 amendments to Azerbaijan's laws on NGOs, a bilateral agreement between an NGO's country of origin and the Azerbaijani government about the NGOs operations is required for the organization's registration.

6. On 10 March 2011, the Ministry of Justice of the Republic of Azerbaijan ordered the Human Rights House, Azerbaijan, part of the Oslo-based International Human Rights House Network (HRHN), to cease all activities immediately. Around the same time the operation of another international NGO, the Baku office of the Washington DC-based National Democratic Institute (NDI) also received a written warning from the Ministry of Justice. The warnings stated that these NGOs could not operate in Azerbaijan without official registration, or in the case of HRHN, meeting existing requirements.<sup>2</sup> In its 2010 Human Rights Report,

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<sup>1</sup> <http://humanrightshouse.org/Members/Azerbaijan/index.html>

<sup>2</sup> <http://www.eurasianet.org/node/63330>

the US Department of State described Azerbaijan's NGO registration procedures as "vague, cumbersome and non-transparent," a process that leads to "long delays that effectively limited citizens' right to associate."<sup>3</sup>

7. The Human Rights House Network in Azerbaijan is a popular meeting place for youth and human rights activists and journalists had been registered in Azerbaijan since 2007. Despite that registration, the government demanded a bilateral agreement with Norway about the organization's operations. According to the Human Rights House Network the centre in Baku was before its closure a focal point for promotion and protection of human rights in Azerbaijan.<sup>4</sup> The Human Rights House Azerbaijan had been under the government scrutiny since its establishment, especially in recent years, according to a statement from the Human Rights House Network.<sup>5</sup> The Network unites 70 NGOs worldwide and these signed a statement in the believe that the closing down of the Human Rights House Azerbaijan is politically motivated, violating the rights to freedom of expression, freedom of association and peaceful assembly and the right to be a human rights defender in Azerbaijan.<sup>6</sup>

8. Local analysts have cited the closure of the NGOs as an attempt by authorities to clamp down on the country's relatively weak civil society. The closures took place just over a month after the start of unauthorized street rallies by youth activists and opposition parties that have been met with the arrests of dozens of rally participants and suspected organizers.<sup>7</sup>

9. On 11 April 2011 member organisations of the International Partnership Group for Azerbaijan (IPGA), a coalition of twenty international NGOs working to promote and protect freedom of expression in Azerbaijan issued a statement urging the Parliamentary Assembly of the Council of Europe to take action to address the alarming freedom of expression situation in Azerbaijan. This statement was supported by major freedom of expression associations as Article 19: Global Campaign for Free Expression, Human Rights House Foundation, Index on Censorship, Institute for Reporters' Freedom and Safety, Open Society Institute – Assistance Foundation, Reporters without Borders and the World Association of Newspapers and News Publishers.<sup>8</sup> This statement was particularly concerned with the wave of arrests and beatings connected with recent protests and the increased pressure against NGOs, stating that: From February to April 2011, the Azerbaijani authorities had stepped up pressure against NGOs working on democracy and human rights issues. In March 2011, authorities ordered the closure of three NGOs in the Azerbaijani city of Ganja. Apart from the NGOs already mentioned had been closed down in March the Institute for Reporters' freedom and Freedom and Safety, whose employees had, according to the above statement, faced surveillance, harassment and detention in recent weeks. The statement furthermore called attention to violence against journalists and impunity for their attackers. Two journalists had prior to the release of the statement been abducted and beaten in connection with criticism of the authorities. The statement also pointed out that in virtually no case of violence against journalists over the past six years had the perpetrators been identified and brought to justice, including the March 2004 murder of editor Elmar Huseyno.<sup>9</sup>

10. On 16 March 2011, the Cabinet of Ministers of the Republic of Azerbaijan adopted the "Rules on holding talks to conclude Agreement on the state registration and closure of the branches or representative offices of foreign non-governmental organizations in Azerbaijan.

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<sup>3</sup> <http://www.eurasianet.org/node/63330>

<sup>4</sup> <http://humanrightshouse.org/Members/Azerbaijan/index.html>

<sup>5</sup> <http://humanrightshouse.org/noop/page.php?p=Articles/16055.html&d=1> Unites 70 NGOs in 15 countries in Western Balkans, Eastern Europe and South Caucasus, East and Horn of Africa and Western Europe.

<sup>6</sup> <http://humanrightshouse.org/noop/page.php?p=Articles/16055.html&d=1>

<sup>7</sup> <http://www.eurasianet.org/node/63330>

<sup>8</sup> [http://en.rsf.org/IMG/pdf/ipga\\_joint\\_statement\\_2d9481.pdf](http://en.rsf.org/IMG/pdf/ipga_joint_statement_2d9481.pdf)

<sup>9</sup> [http://en.rsf.org/IMG/pdf/ipga\\_joint\\_statement\\_2d9481.pdf](http://en.rsf.org/IMG/pdf/ipga_joint_statement_2d9481.pdf)

#### IV. National Legal framework

11. The Constitution of the Republic of Azerbaijan, adopted in 1995, possesses the highest legal power and is the basis of all other legislation (Article 147). It protects the right to freedom of association in Article 58 stating:

- (1) *Everyone is free to join other people.*
- (2) *Everyone has the right to establish any union, including political party, trade union and other public organization or enter existing organizations. Unrestricted activity of all unions is ensured.*
- (3) *Nobody may be forced to join any union or remain its member.*
- (4) *Activity of unions intended for forcible overthrow of legal state power on the whole territory of the Azerbaijan Republic or on a part thereof is prohibited. Activity of unions which violates the Constitution and laws might be stopped by decision of law court.*

12. This provision protects both the positive right to form and join an association and the negative right not to be compelled to join one. The freedom of association is not absolute as evident from paragraph 4 of the Article which bans the activity of organisations that have the aim to overthrow legal state power with force or which “violate the Constitution and laws”. The power to dissolve an association is left exclusively to the courts.

13. Freedom of assembly is protected under a separate article 49.

14. Article 69.2 of the Constitution provides that rights and liberties of foreign citizens living or temporarily staying in the Republic of Azerbaijan may only be restricted according to international legal standards and laws of the Azerbaijan Republic.

15. The Law on NGOs adopted in 2000 was amended in 2009. Public association is defined 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” (Article 2.1). Fund is “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” (Article 2.2). The Law does not apply to “political parties, trade unions, religious unions, local self-governments as well as organizations established with an aim to fulfil the functions of these establishments, and other non-governmental organizations, whose activities are regulated by other laws” (Article 1.4).

16. The Ministry of Justice is required to supervise activities of NGOs to ensure that they comply with “objectives of the NGO Law” (Article 31.2). When it determines that an NGO violates a provision of the Law, it notifies the organization in writing, instructing it to amend the breach. If an NGO is notified more than twice in one year for violations, the Ministry of Justice may call for its dissolution in court (Article 31.4).

17. Only registered NGOs may open branch offices (Article 7.1). State registration of branches and foreign NGOs “shall be carried out on the basis of an agreement signed with such organizations” (Article 12.3).

18. Authorities may refuse to register an association in cases provided for by the Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities (Article 17.1).

19. In the chapter on NGO liability, Article 31.2-1 states that non-governmental organizations shall be warned for failure to submit necessary information for the state registry of legal entities or submission of false information. If an NGO fails to submit within the deadlines an annual financial report, the relevant body of executive power can, by means of writing a written warning to the organization, issue an instruction to submit the relevant report within 30 days. NGOs that fail to submit the report within this period can be held responsible in accordance with the legislation of the Republic of Azerbaijan (Article 31.6).

20. The Decree No. 43 issued on 16 March 2011 on approval of rules for state registration and rules related to the preparation for negotiations with foreign NGOs in the Republic of Azerbaijan. The subject of the negotiations between authorities and foreign NGOs are the conditions that foreign NGOs must meet if they want to operate in Azerbaijan, among them: the NGO must “respect national-moral values” (3.2.2) and must not be involved in “the political and religious propaganda” (3.2.4).

21. These conditions are not further defined.

## **V. International Legal Framework**

22. By virtue of Article 151 of the Constitution, “*international agreements binding upon Azerbaijan*” prevail over domestic legislation, with the exception of the Constitution itself and acts accepted by way of referendum. Thus, in the case of a conflict between the provisions of the ICCPR or the ECHR and the provisions of any of the laws regulating NGOs, the former shall prevail.

23. By virtue of Article 151 the legal value of international acts (except for the Constitution and acts accepted by way of referendum) of which the Republic of Azerbaijan is one of the parties, the international provisions shall prevail.

24. Both Article 22 of the ICCPR and Article 11 of the ECHR protect the right to freedom of association.

25. Article 22 of the ICCPR states:

*1. 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.*

*2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*

26. Article 11 of the ECHR states:

*1. Everyone has the right to /.../ freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. 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.

27. Freedom of association in both the above mentioned instruments guarantees the freedom of natural persons and legal entities to collaborate on voluntary basis within the context of an association without public interference in order to realise a mutual goal.<sup>10</sup>

28. As a civil right and political right freedom of association grants protection against arbitrary interference by the State, for whatever reason and for whatever purpose and it is an indispensable right for the existence and functioning of democracy. No restrictions can be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society. The legitimate purposes for the right to freedom of association are national security, public safety, public order, protection of public health and morals or the protection of the rights and freedoms of others. There must furthermore be a pressing social need for restricting this fundamental right.

29. Freedom of association entails both the positive right to enter and form an association and the negative right not to be compelled to join an association that has been established pursuant to civil law.<sup>11</sup>

30. Freedom of association is an essential prerequisite for other fundamental freedoms. As the Venice Commission has recently stated (CDL(2011)088): The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions.<sup>12</sup>

### **ECtHR case law on Azerbaijan**

31. The European Court of Human Rights has dealt with the right to freedom of association in Azerbaijan in five cases since 2002 revealing the shortcomings of Azerbaijan legislation relating to NGOs. The case of *Tebieti Mühafize Cemiyyeti and Israflow v. Azerbaijan* addressed the dissolution of a registered NGO (TMC) after a local court justified its dissolution on the grounds that its activities did not comply with the requirements of its own by-laws and domestic law. The TMC had not convened a lawful general assembly of its members since its establishment and had received several notifications from the Ministry of Justice.<sup>13</sup>

32. The European Court of Human Rights stated that the mere failure of the TMC to respect certain legal requirements could not be considered such serious misconduct as to warrant outright dissolution.<sup>14</sup> It found Azerbaijan in breach of Article 11 of the ECHR as the dissolu-

<sup>10</sup> Cf. European Commission of Human Rights, 6 July 1977, Dec. Adm. Com. Ap. 6094/73, D & R 9, p. 5(7)

<sup>11</sup> See *Sigurður A. Sigurjónsson v. Iceland*, 30 June 1993, § 35, Series A no. 264

<sup>12</sup> *Koretsky and Others v. Ukraine*, application no. 40269/02, judgment 3 April 2008; *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, pp. 1614-15, § 40; *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00, § 57, 19 January 2006; *The Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 59, ECHR 2006-...; and *Ramazanov and Others v. Azerbaijan*, no. 44363/02, § 54, 1 February 2007).

<sup>13</sup> A thorough discussion of the topic by Mahammad Guluzade and Natalia Bourjail in the *International Journal of Not-for-Profit Law*, vol. 12, issue 3, May 2010 [http://www.icnl.org/knowledge/ijnl/vol12iss3/art\\_2.htm#\\_ftn9](http://www.icnl.org/knowledge/ijnl/vol12iss3/art_2.htm#_ftn9)

<sup>14</sup> *Tebieti Mühafize Cemiyyeti and Israflow v. Azerbaijan*, judgment 8 October 2009, para. 82.

tion of the NGO could not be justified by compelling reasons and was disproportionate to the legitimate aim pursued.

33. The TMC case accentuated major shortcomings of the NGO legislation which are still relevant:

- (1) Involuntary dissolution can be applied arbitrarily. The grounds for dissolution are not strictly defined. Article 59 of the Civil Code states that involuntary dissolution of an NGO may take place if the legal entity engages in activities without the required permit (license) or in activities prohibited by law, or if it otherwise commits repeated or grave breaches of law, or if an NGO systematically engages in activities contrary to the aims set out in *its* by-laws
- (2) There is no reasonable between the means employed – dissolving an NGO – and the objective to be sought as there are no alternative sanctions for NGOs that do not abide strictly by the rules.
- (3) The Law on NGOs assigns excessive authority to the Ministry of Justice to interfere with the internal conduct of an NGO and to initiate court proceedings if it is not satisfied with the NGOs activities or lack of them.

34. The above provisions do not meet the international standards set forth in the aforementioned provisions protecting freedom of association.

## **VI. Problematic Aspects of the 2009 Amended Law on NGOs and the 2011 Decree**

35. The most problematic aspects of the 2009 Amended Law on NGOs and the 2011 Decree concern the cumbersome registration process for obtaining legal personality and the requirement of all international NGOs or their local affiliates in Azerbaijan to sign separate agreements with the government in order to be allowed to operate.

### **Registration of NGOs**

36. Under the Azerbaijani legislation, NGOs need to be registered to acquire legal personality. The Venice Commission reiterates that to make it mandatory for an association to register need not in itself be a breach of right to freedom of association.

37. Requirements in domestic law must be compatible with the obligation of the State to protect freedom of association.<sup>15</sup> The Venice Commission recalls that such a legal requirement may not be an essential condition for the existence of an association, as that might enable the domestic authorities to control the essence of the exercise of the freedom of association.<sup>16</sup>

38. NGOs operating in Azerbaijan have faced a myriad of opaque registration requirements through the years. State registration of NGOs is dealt with in the Civil Code (Articles 47 and 48) and the 2003 Law on State Registration and the State Registry of Legal Entities (Articles 9, 16 and 17). Registration as a rule shall be carried out by the relevant executive power within 30 days. In exceptional cases, when there is necessity for further investigation during the check, the period can be prolonged for additional 30 days (Art. 8 of the Law on State Registration).

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<sup>15</sup>CDL-(2011)088; *Gozelick; Sidiropoulos and Others v. Greece* judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, pp. 1614-15, § 40

<sup>16</sup>CDL(2011)088, §§76,77.

39. The European Court of Human Rights has found delays in the registration process in cases against Azerbaijan to amount to a de facto refusal to register an association.<sup>17</sup> The significant delays in the registration procedure when attributable to the Ministry of Justice amounted to an interference with the exercise of the right of the association's founders to freedom of association.<sup>18</sup>

40. The registration continues to be cumbersome. The Amended 2009 NGO law does not set forth a registration procedure but refers to the Law on State Registration and authorizes the Department of the Ministry of Justice to conduct the registration. This means that all NGOs independent of where they are located within Azerbaijan must register at the Ministry of Justice Office in Baku and this, despite the fact the Ministry of Justice has branches in the different regions.<sup>19</sup>

41. Article 5 of the Law on State Registration lists the documents that must be attached with the application and the same requirements are made for the setting up of branches nationwide.

42. Article 12 of the Law on State Registration further stipulates that the Registrar should be open to the public and here should be an opportunity to get copies of registration records. It is claimed, however, that these are not open and that the Ministry of Justice does not provide the needed information to NGOs and to media. According to the law, information about registered entities should be published monthly by the media by the registering authority. If the information is not published new NGOs cannot check whether the name they chose is already registered.<sup>20</sup>

43. As the Venice Commission has reiterated states have an obligation not only to respect the freedom of association and other rights in the European Convention on Human Rights, member states must also protect and fulfil these rights. Authorities in Azerbaijan must not discriminate against branches or NGOs that are located outside Baku. If the State is rendering it difficult for an NGO to obtain legal personality it is standing in the way of the NGOs right to freedom of association instead of facilitating it – and apparently not because of economic concerns as it is may be legitimate for states to take economic interests into consideration when shaping their policy.<sup>21</sup>

#### Funding:

44. The majority of NGOs are dependent on funding from international donors.<sup>22</sup> Tax privileges for NGOs were abolished with amendments to the law on 3 December 2002 (Article 30 current Law on NGOs). Due to strong protests before the adoption of the 2009 Amended Laws on NGOs proposals were rejected that would have banned NGOs that received more than 50 per cent of their funding from abroad.<sup>23</sup>

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<sup>17</sup> *Ismayilov v. Azerbaijan*, judgment 17 January 2008, § 48.

<sup>18</sup> *Ramazanova and Others v. Azerbaijan*, no. 44363/02, judgment 1 February 2007, §§ 54-60

<sup>19</sup> <http://blacksea.bcnl.org/en/nav/22-azerbaijan.html>

<sup>20</sup> <http://blacksea.bcnl.org/en/nav/22-azerbaijan.html>

<sup>21</sup> See f.ex. *Hatton and Others v United Kingdom*, GC judgment, § 121.

<sup>22</sup> [http://www.usaid.gov/locations/europe\\_urasia/dem\\_gov/ngoindex/2009/azerbaijan.pdf](http://www.usaid.gov/locations/europe_urasia/dem_gov/ngoindex/2009/azerbaijan.pdf)

<sup>23</sup> [http://www.ifex.org/azerbaijan/2009/07/01/ngo\\_law/](http://www.ifex.org/azerbaijan/2009/07/01/ngo_law/)



### **Registration of branches and representations of foreign NGOs in the Republic of Azerbaijan**

45. The 2009 Amended Law on NGOs contains a special provision in Article 12.3 providing that state registration of branches and representations of foreign NGOs in the Republic of Azerbaijan shall be carried out on the basis of the agreement signed with such organisations.

46. The rules for the registration of foreign non-governmental organizations working in the country were approved by Decree No. 43 by the Azerbaijani Cabinet on 16 March 2011. Under the new rules, foreign NGOs need to submit written applications to the Ministry of Justice to start negotiations on preparing an agreement on the state registration of their local branches.

47. The Decree No. 43 lists the subject of the negotiations. The NGO must inform the authorities about its purpose and its activities and their significance for Azerbaijani society. Subsequently the condition is set that the NGOs future activities in the Republic of Azerbaijan must:

- Comply with the Constitution of the Republic of Azerbaijan, the laws of the country and other normative legal acts.
- Respect national and moral values; respect the people of Azerbaijan;
- The NGO should have no activities in territories occupied territories because of the Nagorno-Karabakh conflict and no contact with the separatist regime of Nagorno-Karabakh,
- The NGO may not be involved in the political and religious propaganda
- Provide information required to state registry within the timeframe established by the Law on NGOs

48. Foreign NGOs can only operate in Azerbaijan on the basis of a bilateral agreement between them and the authorities.

49. The procedure is questionable for many reasons.

50. The starting point for defining the scope of restrictions regarding foreign NGOs is that freedom of association is a basic, fundamental human right, as stated in Article 11 of the ECHR and should form the basis of any pluralist democracy. All groups in society should therefore have the freedom to participate in associative life as this contributes towards the development of a strong democratic civil society.<sup>24</sup>

51. Article 16 of the ECHR states that:

*Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens*

52. Article 16 limits the rights conferred in Article 11 in the specific case of foreigners. In no single case has the European Court of Human Rights used Article 16 to justify a restriction on the provisions of the ECHR.

53. The rights recognised by the ECHR are, generally speaking, guaranteed for nationals and foreigners alike, as Article 1 of the ECHR provides that “[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms [. . . ]” listed in the Convention. Article 14 ECHR further reinforces this approach by stating that the rights and

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<sup>24</sup> see doc. [CM/Monitor\(2004\)8](#)

freedoms set forth in the Convention are to be secured without discrimination “on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

54. It must be kept in mind that Article 16 originates from a time when it was considered legitimate to restrict the political activities of foreigners. Subsequent human rights treaties, which Azerbaijan is also bound by, such as the International Covenant on Civil and Political Rights does not contain such a clause as Article 16 of the ECHR.

55. The repeal of Article 16 as the Parliamentary Assembly of the Council of Europe has suggested would not affect existing possibilities to restrict legitimately the rights of foreigners, protected by Articles 10 and 11 by virtue of the second paragraph of these provisions.

56. As the Venice Commission has recently emphasized: Freedom of association without freedom of expression amounts to little if anything. The exercise of freedom of association through NGOs, by workers, students, and human rights defenders in society, has always been at the heart of the struggle for democracy and human rights around the world, and it remains at the heart of society once democracy has been achieved. The right to freedom of association is intertwined with the right to freedom of thought, conscience, religion, opinion and expression. It is impossible to defend individual rights if citizens are unable to organize around common needs and interests and speak up for them publicly.<sup>25</sup>

57. The freedom of expression of an association cannot be subject to the direction of public authorities,<sup>26</sup> unless in accordance with permissible restrictions ascribed by law and necessary in a democratic society for narrowly and clearly defined purposes. Only indisputable imperatives can justify interference with the enjoyment of freedom of association under the European Convention.<sup>27</sup>

58. A decision not to reach an agreement with a foreign NGO must not only be prescribed by law, a condition which might be considered met with the enumerated conditions set forth in Decree No. 43, but furthermore such a decision must also pursue a legitimate aim and be necessary in a democratic society. To condition the views, activities and conduct of an NGO before allowing it to obtain the legal personality necessary for its operation, goes against the core of the values underlying the protection of civil and political rights. It clashes with the whole ideological framework underlying democracy such as pluralism, broadmindedness and tolerance.

59. The Venice Commission reiterates that it is required of the Republic of Azerbaijan as Party to the ECHR and the ICCPR to take steps to give effect to the civil and political rights it has undertaken to ensure to all individuals within the territory of Azerbaijan. This requirement is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the State.<sup>28</sup>

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<sup>25</sup> CDL (2011)088

<sup>26</sup> CM/rec(2007)14 - Recommendation 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*).

<sup>27</sup> Chassagnou et al. v. France, Judgment of 29 April 1999, Appl. nos. 25088/94, 28331/95 and 28443/95, para 113.

<sup>28</sup> CCPR/C/21/Rev.1/Add. 13 Human Rights Committee General Comment No. 31 [80]Adopted on 29 March 2004 (2187th meeting), para. 14.