

**LEGAL RESTRICTIONS ON THE FUNCTIONING
OF CIVIL SOCIETY
ORGANIZATIONS IN AZERBAIJAN:
A COMPARISON BETWEEN NATIONAL LEGISLATIONS OF
THE EU EASTERN PARTNERSHIP COUNTRIES**

ASSESSMENT DOCUMENT



Baku-2017

I. EXECUTIVE SUMMARY

With the introduction of legal provisions, creating obstacles for the functioning of civil society organizations in Azerbaijan, to the national legislation in 2013-2015, the laws concerning Non-Governmental Organizations (NGOs) were made stricter in three aspects: (1) Registration of NGOs; (2) Funding of NGOs; (3) Sanctions against NGOs. As a result of these legal obstacles, influential foreign NGOs and donor agencies were forced to leave Azerbaijan. Most local NGOs are paralyzed. Over the past three years, along with more than 20 restrictive amendments regulating freedom of association made to the legislation, including the arrest of NGO representatives and human rights activists¹, more than 20 criminal offenses against the local NGOs and foreign NGO branches², high tax penalties³ and freezing bank accounts, banning the human rights defenders and journalists from leaving the country⁴ can be considered as a crisis for the civil society.

Election Monitoring and Democracy Studies Centre (EMDS) has conducted a comparative research and analysis of the laws regulating operation of civil society organizations (CSOs) in Azerbaijan with the relevant laws of five post-Soviet OSCE countries. Starting from 2009, the European Union has been carrying out discussions with countries included in the Eastern Partnership (EaP) initiative – Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine – on improving the situation in the field of human rights and civil society, as well as, upgrading national legislations in this field.

The purpose of this document is to analyse legislation of the Republic of Azerbaijan on NGOs in comparison with relevant legislations of other EaP countries, and to identify shortcomings and limitations of the Azerbaijani legislation in the context of NGO legislations of EaP countries for the attention of state bodies, CSOs, media and other interested groups.

II. INTERNATIONAL COMMITMENTS ON FREEDOM OF ASSOCIATION

In Azerbaijan and other EaP countries, the functioning of CSOs are protected within the freedom of association stipulated in several international documents. In this respect, the European Convention on Human Rights (ECHR) as well as the International Covenant on Civil and Political Rights (ICCPR) recognize and protect the freedom of association as a fundamental right. With the exception of Belarus, all EaP countries have ratified both the ECHR and ICCPR, thus committing themselves to guarantee the freedom of association. (Belarus has joined only ICCPR and bears this commitment under ICCPR)

Article 22 of ICCPR stipulates 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.” According to Article 11 of the ECHR, “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

¹The human rights defenders Anar Mammadli, Hasan Huseynli, Emin Mammadov, Bashir Suleymanli, Intigam Aliyev, Rasul Jafarov, Leyla Yunus and Arif Yunus, who were arrested in 2013-2014, were released with the court orders and amnesty decree in 2015-2016.

²There is no official information on the completion and revocation of these criminal cases initiated by the Prosecutor General's Office for Grave Crimes in 2014.

³In 2014-2015, high tax penalties were imposed on a large number of NGOs and NGO chairpersons on the grounds of the criminal cases initiated by the Department of Grave Crimes of the Prosecutor General's Office. The list of individuals and legal entities subject to tax penalties can be found in Appendix #1 attached to this document.

⁴The list of journalists and human rights defenders subject to a travel ban can be found in Appendix #2.

protection of his interests.”

As to the restrictions on the freedom of association, ICCPR and ECHR require that any restriction on the freedom of association shall be prescribed by law, serve legitimate purposes and be necessary in a democratic society.

In order to determine the framework of legislation on the right to freedom of association (especially, the legislation concerning NGOs), the Committee of Ministers of the Council of Europe (CoE CM), which acts as an advisory body in all Europe, has adopted “Recommendation CM/Rec(2007)14 on the legal status of non-governmental organizations in Europe” and an accompanying Explanatory Memorandum in its meeting of the representatives of Ministries held on 10 October 2007. Thereby, the CoE member-states are recommended to form their legislation, policies and practice in accordance with the minimum standards set out in that Recommendation, and take account of these standards in monitoring the commitments they have made.

The Recommendation is composed of 8 parts and 77 articles. It determines minimum standards in Basic Principles, Objectives, Formation and Membership, State Registration, Management, Funding, Property and Public Support, and Accountability of NGOs. In the present assessment document, the Recommendation and the accompanying Explanatory Memorandum are considered as reference documents for identifying minimum standards on the right to freedom of association, within the framework of the research on Azerbaijani legislation in the context of EaP countries.

In addition, Opinion of the European Commission for Democracy through Law (Venice Commission) on NGO legislation of Azerbaijan, dated 12-13 December 2014, as well as judgments of the European Court of Human Rights (ECtHR) on violations of the right to freedom of association, especially its judgments on Azerbaijan, are also taken into account as reference documents.

In this document, countries that belong to the same legal system and which have experienced similar development in their legislations are compared. Besides comparing EaP countries, international documents are also referred to and especially, comparisons are drawn on the basis of the Recommendation of the CoE.

III. NATIONAL LEGISLATIONS OF THE EASTERN PARTNERSHIP COUNTRIES

In the EaP countries, normative-legal acts adopted by the national parliaments constitute the main source of national legislations, including the legislations on NGOs. Accordingly, these normative acts are defined more precisely in secondary laws – i.e. by decrees, orders and decisions adopted by executive government bodies.

Constitutions of all EaP countries provide for the rights to freedom of association. Therefore, the legal regime for NGOs is, first of all, regulated on a constitutional basis.

Apparently, with the exception of *Georgia*, in all EaP countries separate legislative acts regulating operation of NGOs have been adopted. Only in *Georgia*, there is no separate legislation on NGOs (whereby, the functioning of NGOs is regulated by the Civil Code and other legislative acts).

While in the other EaP countries, registration of NGOs is regulated by both specific NGO legislation and a separate legislative act on state registration of legal persons, in *Georgia*, it is regulated by the Civil Code.

Separate legislative acts on funding of NGOs exist in Azerbaijan, Belarus and Georgia. Other EaP countries regulate this issue through other legislative acts.

As to the issue of sanctions against NGOs, they are directly specified in pertinent legislations in all EaP countries. Besides, sanctions are also determined in other legislative acts – Criminal Code and Code of Administrative Offences.

1. REGISTRATION OF NGOs

a) Method of registration of NGOs

There are two methods for registration of NGOs: method of notification and method of permission. In the first case, the authorized state body is only notified about establishment of an NGO. In the second case, a permission is obtained from the authorized state body in order to create an NGO.

Our research shows that, in all EaP countries, the method of permission is applied for registration of NGOs.

b) Organizational-legal form

In all EaP countries, NGOs operate mainly in two organizational-legal form: civic association and foundation.

c) Founding

Azerbaijan requires existence of “a few founders” for establishing a public association. Although the law does not indicate an exact number, the phrase “a few” is understood as “more than one”, and accordingly, two or more founders can apply for registration of a public association. For registration of a foundation, only one person may apply.

Armenia and *Ukraine* put a requirement of two founders for registration of public associations, and one founder for registration of foundations.

Moldova requires three founders for registration of public associations, and one founder for registration of foundations.

In *Georgia*, one founder is sufficient for registration of both public associations and foundations.

Belarus requires minimum ten founders for establishment of a public association, one founder for establishment of a foundation. However, for establishing a country-wide public association, the minimum number of founders is 50.

Founders of public associations and foundations can be both physical persons and legal persons. In all EaP countries, the physical person applying for establishment of a public association or foundation cannot be below the age of 18.

Only in case of creating children and youth NGOs, physical persons below the age of 18 can apply (for example, in *Azerbaijan*, the minimum age for this is 16). When physical persons below the age of 18 apply as founders, additional documentation (for example, written approval of parents) can be required.

With the exception of *Belarus*, both commercial (for example, limited liability companies) and non-commercial (for example, public associations) legal persons can act as founders of NGO.

In *Belarus*, commercial legal persons cannot be founders of NGO; only non-commercial physical persons can be founders.

In EaP countries, foreigners and persons without citizenship can be founders of NGO. In some EaP countries (for example, *Azerbaijan*, *Moldova* and *Ukraine*), foreigners and persons without citizenship are required to have the right of permanent residence in the country in order to be founders of NGO. Foreign legal persons can be founders of NGO as well. However, foreign legal persons may need to meet additional requirements (for example, *Azerbaijan* requires that deputy heads of NGOs established by foreign legal persons must be citizens of Azerbaijan).

No EaP country has determined a minimum charter capital for registering public associations. However, in some EaP countries, a minimum charter capital is determined for registering foundations.

d) Registering body

In all EaP countries, it is necessary to apply to the authorized state body (Ministry of Justice) for registration.

In *Armenia, Azerbaijan, Belarus, Georgia* and *Ukraine*, a specified body or local body of the Ministry of Justice is the registration body, and NGOs that want to obtain the status of legal person must apply to these bodies pertaining to their territorial belonging.

Differently from other countries, *Moldova's* Ministry of Justice registers Statutes of NGOs. After that, the NGO must register with local tax authorities.

In conclusion, in EaP countries, registration of NGOs is not assigned to municipalities or special persons with administrative authorities, but is under the control of the executive government.

e) Registration documents and periods

Azerbaijan

According to the *Azerbaijani* legislation, an NGO which wants to obtain legal personality must undertake registration within 40 days after its establishment.

In accordance with the *Azerbaijani* legislation, an NGO which wants to register with the state must apply in writing. The written application must be signed by the founders or their authorized representatives and certified by a notary. The application must include information on the founders and persons who signed the application, as well as other information required in the application form. Documents on founding (statutes, decisions on establishment and formation), receipt confirming payment of the state fee (11 manats – around 6 Euro), documents confirming the information on the founders, document showing the legal address of the NGO, etc., should be enclosed together with the application. The submitted documents are examined by the Ministry of Justice within 30 days. In necessary cases, this period can be extended for another 30 days. When the authorized body finds out deficiencies that do not constitute a reason for refusing registration, the NGO is given 20 days to overcome those deficiencies. After removal of those deficiencies, the application should be responded to within ten days. If the authorized body does not reply to the application within the period specified in law, then the NGO is automatically considered as registered.

Belarus

In accordance with the legislation of *Belarus*, an NGO which wants to obtain state registration, must apply to the Ministry of Justice or its local body within one month after establishment.

The authorized body must examine the application and adopt a decision within one month. When the authorized body finds out deficiencies that do not constitute a ground for refusing registration, it assigns 20 days to overcome those deficiencies. If a decision on refusal is adopted, the applicant is informed of such decision within five days.

Armenia

According to the legislation of *Armenia*, after submission of the necessary documents for registration, the authorized body either issues a registration document to the NGO or adopts a decision on refusal of registration within ten days. If the person applying for registration uses relevant document templates for state registration, the registration is carried out within two days.

Georgia

In accordance with the legislation of *Georgia*, an NGO which wants to obtain state registration submits to

the Ministry of Justice other documents (statutes, a document confirming legal address, information on the founders, information on organizational structure of the NGO, information on the authorized representative of the NGO, a document on payment of the state fee, etc) besides the application for registration.

State registration or refusal of state registration is carried out within one working day; if the necessary fee has been paid – during the day of submission (when the registration is carried out within one working day, 100 lari is paid; when it is done during the day of submission, 200 lari is paid).

Moldova

According to the legislation of *Moldova*, an NGO which wants to register its Statutes, must apply to the Ministry of Justice within 30 days.

After submission of the necessary documents, either its Statutes receive state registration or the registration is refused within one month. When the requirements of law are violated, the registration can be postponed for up to three months.

Ukraine

In accordance with the legislation of *Ukraine*, NGOs which want to receive the status of legal person must apply using an application form determined by the Ministry of Justice. The application must be submitted within 60 days after establishment of NGO. Application can be submitted directly or by post.

The authorized state body must review application of public associations for state registration within seven days, application of foundations within three days.

f) Grounds for refusal of registration

Azerbaijani legislation specifies the following grounds for refusal of state registration of NGOs:

- when the submitted documents are contrary to the Constitution and/or other legislative acts;
- when the information shown in the application and/or in enclosed documents is wrong;
- when objectives, duties and forms of activity of the organization which wants to obtain the status of legal person are contrary to the laws;
- when the statutes of an NGO envisages taking over powers of state or local self-government bodies, as well as assuming state control and revision functions;
- when the requirements of the legislation on protection of brand names are violated or when a non-commercial organization with the same name is already registered;
- when names of state bodies of the Republic of Azerbaijan, as well as names of prominent figures of Azerbaijan (without the permission of their immediate relatives or heirs) are used in the name of NGO;
- when deficiencies found out in establishment documents are not removed within 20 days.

Legislation of *Belarus* specifies the following grounds for refusing state registration to NGOs:

- when the rule for establishment of public association is violated;
- when the required documents are not submitted in accordance with the legislation;
- when legal requirements are violated (this including submission of false information or forged documents); when state symbols are used in the name of the organization;
- when the membership is lower than required by law;
- when the application form determined by the Ministry of Justice is not used and/or deficiencies in accompanying documents are not removed.

According the *Armenian* legislation, state registration of NGO is denied:

- when the statutes of NGO is contrary to the Constitution and laws of Armenia;
- when the requirements of law on names of legal persons are violated;
- when the documents required for registration of NGO are not submitted in the necessary form;
- when the deficiencies are not removed.

In accordance with the *Georgian* legislation, the grounds for refusal of state registration of NGOs are as follows:

- when goals and objectives of NGO are contrary to the constitutional principles of Georgia, commonly accepted ethic norms and/or the existing laws;
- when the NGO violates the constitutional order and territorial integrity of Georgia, or carries out propaganda of war and ethnic hatred;
- when the application is not written in line with the rule specified in law;
- when the documents specified in law are not enclosed with the application or not certified by notary.

According to the legislation of *Moldova*, state registration of the Statutes of an NGO can be denied on the following grounds:

- when the Statutes of NGO is contrary to the Constitution and other laws;
- when the specified requirements are not fulfilled within the period of postponement;
- if the applicant NGO has the same name with an already registered NGO;
- when inaccurate information is found out in the submitted documents;
- if the name of the NGO offends religious, national or moral feelings of citizens.

Legislation of *Ukraine* envisages refusal of state registration to NGOs in the following cases:

- when not all the required documents are submitted;
- when documents are incomplete;
- when the documents have been submitted by an unauthorised person;
- when the public association does not re-submit correctly the documents within the specified period.

2. FUNDING OF NGOs

Under the sub-title “Funding of NGOs” the issue sources of NGO funding and tax laws applied to NGOs have been examined.

a) Sources of funding

Having looked into legislations of all EaP countries, the following sources of NGO funding have been identified:

- membership fees;
- grants and donations given by local and foreign persons;
- state assistance;
- revenue resulting from commercial activities permitted by law.

Legislations of all EaP countries allow for membership fees as a main source of funding of NGOs. As to economic activity, NGOs cannot act as commercial organization directly and entirely. A commercial activity that NGOs can undertake (either directly or through instituting a commercial organization) is limited by attaining the objectives set, and the received revenues are spent to achieve those objectives; it cannot be distributed among members.

With the exception of *Belarus*, in EaP countries NGOs are allowed to undertake commercial activities to achieve their objectives.

Grants and donations have an important place among sources of funding for NGOs. Especially, in post-Soviet countries, where traditions of civil society are weak, foreign funding (grants) plays a vital role for functioning of NGOs. Analysis of the legislations of all EaP countries shows that, the basis for allocating grants is grant agreement.

Among EaP countries, *Azerbaijan*, *Belarus* and *Georgia* have adopted a separate legislative act concerning grant issues. Other countries deal with these issues within the framework of their NGO law, tax law and civil law. *Georgian* law on grants is brief in content and determines the general principles on receiving grants.

Legislations of *Azerbaijan* and *Belarus* are more detailed and include many restrictive provisions on receiving grants (especially foreign grants).

b) Taxation issues

In EaP countries, grants and donations received by NGOs are not considered as income and are not subject to income tax. Similarly, goods and services provided for grant purposes are not subject to value added tax (VAT). However, tax reduction changes from country to country. For example, *Belarus* does not apply tax concessions to all grants and donations. *Moldova* does not give any VAT concession to NGOs, with the exception of some international projects. *Georgia* does not apply customs fees and payments to the goods brought into the country for non-commercial purposes.

For tax exemption, the legislation of Belarus requires to present evidences of membership in the organization for the persons who paid membership fees, as well as proof of expenditure of the received grant for the envisaged purposes.

In EaP countries, while grants and membership fees received by NGOs are not subject to tax, persons working on employment contracts and individuals providing services in grant projects are subject to taxation and pay the relevant taxes. Social security taxes must be paid as well.

c) Azerbaijani legislation on grants

Differently from other EaP countries, *Azerbaijan* and *Belarus* have adopted more detailed laws regulating grant issues and have put restrictions on receiving grants (especially foreign grants).

According to the *Azerbaijani* legislation, the following persons/entities (donors) can give grants:

- The Republic of Azerbaijan (state);
- local physical and legal persons;
- international organizations and their representative offices;
- foreign governments and their representative offices;
- financial-credit institutions;
- branches and representative offices of foreign legal persons which have registered with the state, as well as branches and representative offices of foreign NGOs which have concluded agreement with the Ministry of Justice.

In accordance with the legislation of Azerbaijan, international organizations and their representative offices, foreign governments and their representative offices, branches and representative offices of foreign legal persons which have registered with the state, as well as branches and representative offices of foreign NGOs which have concluded agreement with the Ministry of Justice can act as donors after obtaining the right to give grants.

In order to obtain the right to give grants, opinion of the Ministry of Finance on financial-economic relevance of the grant is required. If the needs in the target field of the grant are met by the state, this constitutes a ground for financial-economic non-relevance of the grant. When the purpose of giving the grant and its financial-economic justification are not shown precisely, the Ministry of Finance refuses to issue opinion on financial-economic relevance of the grant.

Moreover, concluded grant agreements must be registered at the Ministry of Justice. Agreement must be submitted to the Ministry of Justice for registration within 30 days after concluding it. No bank operation or any other operations can be carried out with regard to the grant agreements (decisions) that are not registered.

Recipient of the grant (if the recipient is an NGO or physical person) must apply in writing to the Ministry of Justice both for obtaining the right for foreign donor to give grants and for registering the concluded grant agreement. The application must be accompanied by the original of the grant agreement, original of the signed project, copy of ID card of the physical person, document confirming powers of the authorized representative of the legal person, application for considering the grant relevant, and financial-economic justification of the grant.

After submission of the application, the Ministry of Justice sends it to the Ministry of Finance in order to get their opinion on financial-economic relevance of the grant. Once the Ministry of Finance issues such an opinion, the Ministry of Justice examines whether the submitted documents and activities to be carried in the framework of the grant agreement comply with the laws of the Republic of Azerbaijan, statutes (regulations) of the recipient, as well as whether terms of the agreement comply with the concept of grant. It also examines whether or not: the recipient is eligible and the grant is received from a donor in accordance with the criteria established by law; the applicant is an authorized person; all required documents have been submitted and the information in those documents is correct; allocation of the grant funds will change during implementation of the grant; provisions of the agreement are clearly expressed and planned activities are precisely indicated; NGO or foreign NGO has submitted financial reports to the Ministry of Finance.

The Ministry of Justice must register the grant agreement within 15 days after receiving the documents. When necessary, this period can be extended for another 15 days. It gives 10 days for correcting deficiencies in the documents. The Ministry of Finance reviews relevance of the grant within 7 days. If necessary, it can extend its examination for additional 7 days.

As shown above, the Azerbaijani legislation specifies very severe bureaucratic restrictions on receiving and registering grants from foreign donors. The legislation gives very broad powers to the Ministry of Finance for not considering the grant financially and economically relevant, and to the Ministry of Justice for not registering the grant.

d) Grant legislation of Belarus

According to Belarus legislation, there are two types of foreign assistance: foreign gratuitous assistance and international technical assistance. The main difference between them is the procedure for registering with the government bodies.

Foreign gratuitous assistance is defined as funds and other assets, or the right to use them, transferred on a gratuitous basis to a legal entity (including an NGO) or an individual of Belarus.

Regardless of its value, all foreign gratuitous assistance received by NGOs, must be registered with the Department of Humanitarian Activity of the Secretariat of Affairs of the President of Belarus. Non-registered grants may not be used. The only exception is the grants received for the programs implemented within the contracts ratified by Belarus or approved by the President. Those grants are not required to be registered. These exceptions are defined by the Department of Managing Affairs of the President.

It is prohibited to receive foreign funds for organization of elections and referenda, political assemblies and election propaganda among population.

In order to register a foreign grant, the NGO should apply to the Department of Humanitarian Activity of the President. The application should include the copy of the grant agreement, comprehensive plan of how the grant will be used, copy of the NGO's registration document, the document proving existence of its bank account. The Department may request additional documents. In practice, NGOs are also required to provide a letter from the relevant government agency about their support to a particular project implemented by the NGO.

The registration is carried out within one month after submission of the documents. The registration can be denied on vague grounds (such as “grounds for registration do not exist” or “other requirements specified in the legislation are not met”). When the grant agreement is not registered, it should be returned to the donor or directed to another recipient.

International technical assistance is the aid given through international organizations and their representative offices, as well as foreign governments and their representative offices for social, economic and environmental purposes. With regard to this type of assistance, usually the government of Belarus or one of the state bodies acts as the recipient. NGOs join to such projects as sub-grantees or sub-contractors. International technical assistance is registered by the Commission on the Issues of International Technical Assistance under the Cabinet of Ministers. All international technical assistance is entirely under the authority of that Commission.

As shown above, the legislation of Belarus has established a very complicated mechanism for registration of foreign grants and this makes it difficult for NGOs to receive foreign grants.

Registration of or refusal to register foreign grants totally depends on discretion of the state body. No precise and objective criteria have been determined with regard to this.

3. SANCTIONS AGAINST NGOS

NGOs are important actors in a democratic society. Thus, compliance to legislation when it is reasonable is one of their obligations. Accordingly, certain sanctions are foreseen for non-compliance to legislation, and violation of NGO laws may lead to relevant punishment.

Analysis of the legislation of EaP countries show that following are the general sanctions against the NGOs:

- warning;
- fines;
- confiscation of the property;
- ban on activities;
- suspension of the activity.

Most of these sanctions are envisaged in NGO legislation. However, in some cases the Code of Administrative Offences and Criminal Laws might be used as a basis for implementation of sanctions against the CSOs.

While putting forward sanctions against CSOs, EaP governments often refer to the violation of NGO laws, non-submission of tax and financial reports, preventing relevant official body from conducting inspection (like in Azerbaijan), activity of non-registered NGO (like in Belarus), activity against Constitutional order and territorial integrity, propaganda of war and hatred, non-registration of grants, use of non-registered grants, non-inclusion of donations to financial reports and so forth.

As mentioned above, the sanctions are envisaged in relevant NGO legislation. However, some sanctions are envisaged in the Administrative Offences Laws (for example, fines) or Criminal Law (like confiscation). There are some sanctions, for example, cancellation of official registration of the legal entity is foreseen both in NGO laws and Criminal Law.

Nevertheless, the form and content of the sanctions may vary from country to country. For example, according to *Azerbaijani* legislation, when no other punishment is foreseen for violation of NGO laws and Statutes of the organization, the CSO is warned and given 30 days to fix shortcomings. Also, if the CSO has not submitted its financial report in time, the Ministry of Finances orders to give 30 days' time to submit the report. If the NGO, which received warning does not comply with requirements, it is fined according to the administrative offences legislation.

Azerbaijani legislation also envisages suspension of the organization's activity for one year as a sanction. Activity of the NGO for the period up to one year can be suspended upon request of its members or the authorized body if:

- the NGO prevents to eliminate circumstances that led to announcement of emergency situation;
- the NGO does not fix the shortcomings, which were indicated in the warning or order of the relevant authority, even after being subject to administrative punishment for this reason;
- violation of the rights of the NGO members by its executive body is established.

If the NGO has received written warning or order to fix violations more than twice in a year, it can also be cancelled with the court order upon the request of the relevant authorized body of executive power.

Similar rules are established by *Belarus* legislation. If the civil society organisation breaks the NGO laws, the Ministry of Justice issues a written warning and establishes time for fixing the shortcoming. If the organisation does not eliminate the violations, the Ministry of Justice sends a motion to the court with request to suspend the activity of the NGO. The activity of the NGO might be suspended for the period from one month to six months. The court may also order termination of the NGO upon relevant request of the Ministry of Justice.

NGO may be terminated by court decision in the following cases:

- conducting propaganda of the destruction of Constitutional order, propaganda of war, or racial, ethnic, national, religious or social hatred;
- continues violation of the legislation and its own statutory founding documents within one year after warning of the Ministry of Justice;
- if the legislation was violated during the state registration of the legal entity and these violations are impossible to fix;
- if the number of NGO members are less than a minimum threshold envisaged in the legislation;
- if the deficiencies leading to the suspension of the NGO's activity by the court order are not eliminated.

In *Belarus* termination of international and nationwide NGOs are ordered by the Supreme Court upon request of the Ministry of Justice, while decisions on termination of local NGOs are issued by local courts upon request of the Ministry of Justice.

Armenian and *Georgian* legislations provides that termination of NGOs require court order, issued upon the request of the Ministry of Justice. Activity against Constitutional order, propaganda of war and violence, as well as promotion of racial, ethnic, and religious hatred, continuous activity leading to gross violation of the legislation and activity contradicting the goals stated in the Statutes of the organization may be grounds for termination of the NGO in Georgia and Armenia.

Moldovan legislation also envisages warning and financial sanctions for non-submission of financial and other reports in a timely manner.

Additionally, *Moldovan* laws provide that the NGO can be terminated in following cases:

- attempt to violent destruction of the Constitutional order;
- attempt to actions aimed at overthrow of legitimately formed public body;
- formation of paramilitary forces;
- violation of other people's freedoms and rights protected by laws;
- non-compliance to repeated warnings on elimination of violations of law – refusal to fix such violations.

Legislation in *Ukraine* envisages sanctions, such as warning and fines; temporary suspension of the NGO's partial activity; temporary suspension of all activities of the NGO and compulsory termination of the NGO.

According to the *Ukrainian* legislation, attempt to destroy constitutional order, formation of paramilitary

groups, propaganda of war and separatism might be grounds for termination of the NGO. Decisions on termination of NGOs are issued by courts.

IV. CONCLUSION

Based on the comparative analysis, there are following common characteristics of the NGO legislation in all EaP countries.

- There are two main organisational-legal forms of NGOs: Public Association and Foundation.
- Permission is the main form of the state registration of NGOs.
- Requirements and requested documentation for NGO registration are similar.
- The state bodies issuing registration of NGOs are similar.
- Taxation laws applied to NGOs are parallel in many cases.
- The possible sanctions envisaged against NGOs are similar.

Nevertheless, there are some limitations, specific to Azerbaijani legislation, which make it different from some EaP countries (or most of them), also putting it in a conflict with recommendations of the Council of Europe and OSCE:

- The time required for the state registration of Azerbaijani NGOs is too long (In Georgia, Armenia and Ukraine it is 1-7 days). Lengthiness of the registration period contradicts with the “reasonable time for state registration or denial in state registration should be established” principle, recommended by the Venice Commission of the Council of Europe. It should also be taken into consideration that the time for registration of commercial entities in Azerbaijan is only three days. This shows that the time for state registration of the NGOs is not only in compliance with European standards, but also discriminatory in comparison with other registration procedures;
- In comparison with most of other EaP countries, the grounds for denial of state registration of NGOs in Azerbaijan are imprecise and formulaic. The rules are not specific and are too vague and uncertain.
- The legislation on the funding of NGOs, especially when it comes to foreign funding, Azerbaijan differs from the most of the EaP countries and is very restrictive. Two-step registration is required for foreign funding of NGOs in Azerbaijan. The recipient NGOs have to submit a lot of documents and are subject to vague requirements within the procedural phases, both for obtaining a right for the foreign donor to give grants in Azerbaijan and state registration of a particular grant. The definitions within these phases are vague and gives indefinite power to the government officials to interpret them in different ways. If the NGO fails to pass those procedural phases and as a result, grant is not registered, the NGO is not able to use the grant received from foreign donor.
- The scope of sanctions used against NGOs (for example, responsibility for administrative offence in case of the use of grants non-registered by the state authorities) is wider than in the most of the EaP countries. Moreover, the reasons for forced suspension of the NGO activity or termination of the NGO are more vague.

As a result, Azerbaijani legislation in its current state, contradicts the Article 22 of ICCPR, Article 11 of the ECHR and relevant precedent case-law of the ECtHR, Recommendation of the Committee of Ministers of the Council Of Europe, as well as Opinion of the Venice Commission of 2014.

V. RECOMMENDATIONS

Most of the above-mentioned problems related to the legal framework of civil society organisations are rooted in the NGO legislation. Thus, as a result of this comparative analysis, the following are recommended for elimination of legislative problems of NGOs:

1. The length of time for NGO registration procedures should be shortened. The time of NGO registration should be 3 days or close to 5 days, which is required for the registration of commercial entities;
2. The requirement of permanent residence for foreigners and stateless persons wishing to establish an NGO should be abolished. The requirement for foreign legal entities to appoint local residents as deputies in the registered NGO should also be abolished.
3. The requirement for religious NGOs to acquire permission of the state body regulating the religious entities for registration should be abolished.
4. The list of grounds for denial of state registration should be shortened and be more precise. The reasons for denial of state registration should be limited to (a) failure to submit all required documents; (b) non-compliance with the legislation regarding the names of legal entities; (c) inclusion of an activity against the Constitutional order of the state or against democratic society into the objectives of the organisation, stated in its Statutes;
5. Groundless restriction for funding of NGOs should be lifted. In particular, the norms and regulations limiting foreign funding and requiring state registration of grants should be lifted. Foreign donors should enjoy same status and equal legal framework with the local donors.
6. The scope of the sanctions against NGOs and the power of state authorities in applying sanctions should be limited.
7. The number of administrative offences applied to NGOs should be reduced.
8. Suspension of activity or termination of NGO should only be applied in the case of serious violations (for examples, if it is established that the founders or managers profit from the revenues of organisation, which are supposed to be spent for non-commercial purposes).
9. Imprecise provisions, used as a ground for suspension or termination of NGOs should be lifted from the legislation.

LIST of
foreign and domestic NGOs subjected to tax penalties and seizure of bank accounts
upon the criminal prosecutions carried out by the Grave Crimes Department of the Prosecutor
General's Office in 2014-2015

*The mentioned amounts are original amounts of tax penalties issued by the tax authority and do not comprise the additional fines for "non realizing of the payments in time" **

	Name of organization	Responsible person	Amount of net tax penalty (AZN)	Status-quo
	International organizations			
1.	Oxfam Great Britain	Shovkat Alizada	797,835.64	Office closed, the responsible person in exile
2.	Friedrich Ebert Foundation	Rashad Alizada	207,704.90	Office closed
3.	Friedrich Naumann Foundation	Yasemin Pamuk	21,108.16	Office closed, the responsible person in exile
4.	IREX - International Research and Exchange Board	Sabuhi Gafarov	436,574.94	Office closed, seizure on bank accounts remains
5.	Open Society Institute Assistance Foundation (OCIAF)	Angela Nicoara	103,780.16	Office closed, seizure on bank accounts remains
6.	American Bar Association (ABA CEELI)		400,236.49	Office closed, seizure on bank accounts remains
7.	World Vision International Humanitarian Organisation		606,799.16	Office closed, seizure on bank accounts remains
8.	Chemonics International (USA)	Smodlaka Krajnović Morana	507,945.64	Office closed, seizure on bank accounts remains
9.	National Democratic Institute (NDI)		26,858.00	Office closed, seizure on bank accounts remains
10.	Radio Europe/Radio Liberty	Khadija Ismayilova (ex-chief of bureau)	45,145.63	Office closed, staff partly active (most of them in exile), seizure on bank accounts and tax penalty remain, the trial on latter suspended for ongoing tax investigation, which remains without any action as well

	Domestic organizations			
11.	The Society of Women of Azerbaijan for Peace and Democracy for the Transcaucasus	Leyla Yunus	369,378.51	Office closed, seizure on bank accounts remains the responsible person in exile
12.	Election Monitoring and Democracy Studies Center	Anar Mammadli	27,517.61	seizure on bank accounts and tax penalty remain
13.	International Cooperation of Volunteers PU	Elnur Mammadov	20,196.62	seizure on bank accounts lifted, the resp. person conditionally released, travel mban remains
14.	Human Rights Club	Rasul Jafarov	6,257.11	tax penaly paid, seizure on bank accounts remains, the resp.person pardoned
15.	Legal Education Society	Intigam Aliyev	65,636.85	resp. person conditionally released, travel ban, seizure on bank accounts remain office remain sealed and closed
16.	Institute for Reporter's Freedom and Safety	Emin Huseynov Mehman Huseynov	247,551.72	tax penalty paid, the proceedings stopped, seizure on bank accounts remain, E.Hüseynov in exile, acting chairperson Mehman Huseynov imprisoned
17.	National and International Study Center (CNIS)	Leyla Aliyeva	11,745.81	seizure on bank accounts, the tax penaly remains, the resp. person in exile
18.	Public Association for Assistance to Free Economy (PAAFE)	Zohrab Ismayil	10,689.84	as seizure on bank accounts lifted tax authority immediately withdrew the penalty's amount thereout, the seized documents non-returned, the resp. pers. in exile, results of authoritating internal elections necessary for activity are not registered by MoJ
19.	The Economic Research Centre (ERC)	Gubad Ibadoglu Galib Bayramov	130,700.79	seizure on bank accounts lifted, seized documents has not returned, results of authoritating internal elections necessary for activity are not registered by MoJ
20.	Democracy and Human Rights Resource Center	Asabali Mustafayev	6,131.07	seizure on bank accounts and travel ban of the resposibe person remain. As there is amounts awarded by ECHR, the latter requested to issue priority reviewing and

	Domestic organizations			
				intervening of HR Commissioner
21.	Azerbaijan Lawyers Association	Annagi Hajibayli	4,726.00	seizure on bank accounts and travel ban of the responsible person remain, tax penalty paid
22.	The Oil-Workers Rights Protection Organization (OWRPO)	Mirvari Gahramanli	79,679.81	seizure on bank accounts lifted, no proceeding on tax penalty
23.	Democratic Institutions and Human Rights Union	Elchin Abdullayev	21,942.32	seizure on bank accounts lifted, investigation permanently stopped, the resp. pers. in exile
24.	Caucasus Media Research Centre	Anar Orujov and Aziz Orujov	8,035.89	the responsible person in exile, his brother, Aziz Orujov, another executive person has been arrested and charged
25.	Aran Humanitar Regional Development Organisation	Rauf Aliyev	13,928.89	tax penalty remains
26.	Media and Public Initiatives Center	Samir Aliyev	282.29	seizure on bank accounts lifted
27.	East-West (Şərq-Qərb”) Study Center	Arastun Orujlu	72,037.18	the resp. person in exile, tax penalty remains.

LIST of
local individuals and legal persons subjected to the travel ban
among the civil society representatives in Azerbaijan
targeted since 2014 -2015 years

	Title	Responsible person	Travel ban
1.	International Cooperation of Volunteers PU	Elnur Mammadov	✓
2.	Legal Education Society	Intigam Aliyev	Traven ban remains, case lodged with ECHR
3.	Institute for Reporter's Freedom and Safety	Mehman Huseynov	Mr.Huseynov is imprisoned, had a travel ban before it and is deprived of national ID by authorities' pettifoggery for returning it
4.	National and International Study Center (CNIS)	Leyla Aliyeva	✓ in exile
5.	Democracy and Human Rights Resource Center	Asabali Mustafayev	✓,✓ Double-ban initiated by two separate (prosecution and tax) authorities
6.	Azerbaijan Lawyers Association	Annagi Hajibayli	✓
7.	Caucasus Media Research Centre	Aziz Orujov (Garashoglu)	✓ in pre-trial detention since 2 May 17
8.	Society for Democratic Reforms (unregistered)	Ogtay Gulaliyev	✓
9.	Republican Alternative Movement	Natig Jafarli	✓
10.	Republican Alternative Movement	Azar Gasimli	✓

	Journalists	Occupation	Relevant case and status-quo
11.	Aynura Heydarova	Independent (freelancer) journalist, has cooperated with Meydan TV	the prosecution case on Meydan TV; in exile, risk of prosecution remains, if returns
12.	Aynur Gambarova (Elgunes)	Independent journalist with experience in several critical media entities distinguishing with critics, inc. Meydan TV	the case of Meydan TV
13.	Aysel Umudova	an independent journalist, has cooperation with Meydan TV and other media entities	the prosecution case of Meydan TV Court eliminated the travel ban, however, the complaint proceeded to ECHR
14.	Aytaj Ahmadova	an independent journalist , worked for Meydan TV	the prosecution case of Meydan TV learned the ban in border check point (20.11. 15)
15.	Aytan Alakbarova (Farhadova)	an independent journalist , cooperated with media inc Meydan TV	Meydan Tv case, learned the ban in return homeland,
16.	Babek Bakir	Radio Azadlig the researchers` team leader	the prosecution case of Radio Azadlig
17.	Elnur Mukhtar	freelancer multi media reporter , cooperated with numerous mass media entities, inc. Meydan TV	the prosecution case of Meydan TV
18.	Guler Mehdizade	freelancer journalist	the prosecution case of Meydan TV domestic court eliminated the ban, but the case taken to ECHR
19.	Izolda Agayeva	independent (freelancer) journalist, author of researches, pre-repression period was in staff of Meydan TV currently cooperating with different independent criticizing mass media entities	the prosecution case of Meydan TV though interrogated repetitively, she was aware of the ban only in airport when returning homeland; currently is deprived of her master degree education in Turkey she won last year
20.	Kamran Mahmudov	Ex-employee in Azadliq Radio, freelancer journalist, anchor , currently contributes to Kanal 13 and BBC	the prosecution case of Radio Azadlig repeatedly interrogated in 2014, ban issued on 27 April 2017, learned on 22 June in border crossing point where detained by border guardin g service and local police, as the

			MIO ignores the ban, is determined to raise legal file
21.	Natig Javadli	an experienced journalist actively working with independent media entities, inc. Meydan TV	the prosecution case of Meydan TV
22.	Sevinj Abbasova (Vagifgizi)	Journalist – researcher, reporter worked for Meydan TV	the prosecution case of Meydan TV the court litigation on challenge of the ban is ongoing
23.	Shahvalad Namazov (Chobanogu)	Experienced journalist worked for leading independent, criticizing media	the prosecution case of Radio Azadlig
24.	Shirin Tire (Abbasov)	Freelancer journalist, vlogger, worked for IRFS and Meydan TV	the prosecution case of Meydan TV
25.	Tural Asadov	journalist, has contributed to Meydan TV for Russian content	the prosecution case of Meydan TV learned the ban only in airport (26.9.16), flight was cancelled, than ban officially confirmed as related to Meydan Tv case
26.	Khadija Ismayil	Researcher-journalist Ex-chief of the Baku Bureau of Radio Azadlig	the prosecution case of Radio Azadlig she has been arrested and conditionally released, but the travel ban remains
27.			

Document prepared by:

Anar Mammadli

Samad Rahimli

Hafiz Aliyev

Ruslan Aliyev

Contact EMDS:

Phone: (+994 50) 333 46 74

E-mail: info@smdtaz.org

Twitter: @SMDT_EMDS

Web: www.smdtaz.org

