



Recommendations ahead of the 8th EU-Azerbaijan Human Rights Dialogue (4-5 March 2020)

The upcoming ***EU-Azerbaijan Human Rights Dialogue scheduled for 4-5 March 2020 in Brussels, Belgium*** provides an important opportunity to encourage Azerbaijan to uphold its international human rights commitments.

This overview will address the issue of **political prisoners**, the **discouraging environment in which civil society organisations try to operate**, and the **lack of genuine and effective implementation of the judicial decisions of the European Court for Human Rights (ECtHR)**, to which Azerbaijan is bound.

I. Country context

Since the seventh round of the EU-Azerbaijan Human Rights Dialogue held in February 2019, the overall human rights situation in Azerbaijan has shown little real improvement. The release of over 50 political prisoners by Presidential pardon on 16 March 2019 was a positive signal from Azerbaijani authorities; however, the lack of genuine legal reform and continued arbitrary implementation of the existing legal framework remain problematic and prevent human rights defenders (HRDs)—and the broader public—from enjoying the freedoms of association, assembly and expression, which are essential to exercising their right to defend human rights.

The economic growth experienced in Azerbaijan over the past decade has not been met with a political ‘thaw,’ and its recent downfall has only exacerbated repression. With the current fragile state of the economy, actual, but also perceived, security challenges are feeding the governments’ policies and practices. The internationally accepted principles of sovereignty and non-interference in the internal affairs of other states are being skirted and abused by Azerbaijani government authorities to justify domestic repression. Human rights defenders continue to be the targets of threats, torture and ill-treatment, harassment, with their family members and associates increasingly also subject to threats, particularly those of exiled HRDs who continue their important work defending human rights from abroad. The criminal justice system continues to be used to arbitrarily convict HRDs, effectively silencing dissenting voices and halting their peaceful activities. As of mid-February 2020, more than 100 political prisoners, including HRDs, journalists, academics, anti-corruption activists, and religious activists, are behind bars on spurious grounds. As their detention has no legal basis, their rights to a fair trial are effectively also denied.

Of those political prisoners who were released in 2019 or in previous years, some are now subject to new (and arbitrary) criminal investigations, continue to face frozen bank accounts, travel bans,

and/or harassment, or have been forced to flee the country. Smear campaigns and covert forms of harassment continue to be used to hamper and discredit HRDs. The government monopoly on the media continues to ensure skewed coverage of human rights defenders and their activities, presenting HRDs supported by foreign institutions for example as ‘grant eaters.’ Meanwhile, the ‘foreign-agent’ restrictions stemming from the 2014-2015 legal reforms continue to be serious obstacles for the peaceful activities of non-governmental organisations (NGOs). Even though the European Court of Human Rights (ECtHR) has ruled in favour of a number of human rights NGOs in Azerbaijan, it remains unclear when and to what extent authorities will adhere to those decisions and implement the necessary structural changes to allow human rights defenders to exercise their rights freely.

The discouraging human rights record of Azerbaijan continues to be exacerbated by corruption. Education, healthcare, and other social services suffer from increasing corruption. The related dissatisfaction with the situation of socio-economic rights in the country has resulted in a number of protests throughout 2019. While the two peaceful protests in October 2019 were dispersed violently and were followed by arrests of some protestors, the dissatisfaction among the population has not wavered, and continues to be voiced in small weekly protests at the entrances to relevant state institutions.

Despite the government’s deepening restrictions of both individuals and the organisations they work through, HRDs continue their valuable work, both in Azerbaijan and abroad. For real change, both internal and external pressure on the authorities of Azerbaijan and demand for accountability are essential. The following issues are viewed as essential topics of discussion for the upcoming EU-Azerbaijan Human Rights Dialogue: the issue of political prisoners; the discouraging environment in which civil society organisations try to operate; and the lack of genuine and effective implementation of ECtHR rulings.

II. Political Prisoners

The release of more than 50 political prisoners (HRDs, journalists, bloggers, and religious activists in March 2019) was a positive gesture. The HRC and NHC welcome such a development, although the activists should never have been prosecuted for their legitimate and peaceful human rights activities in the first place. In the short term, it is essential that the remaining political prisoners are released, fully legally rehabilitated, and allowed to continue their work in the field of human rights. However, in order to have a sustainable solution to end politically-motivated arrests of HRDs, it is important to undertake legal reform. The investigation phase of cases remains particularly problematic as it leads to a significant amount of questionable or fabricated “evidence” being presented before the courts. The current legal framework grants far too wide discretion to various authorities, which does little to stem the tide of arbitrary accusations and charges against HRDs in the future.

Within the current legal framework, various state bodies have the authority to launch criminal investigations. According to the Criminal Procedure Code, the Law on Prosecutor’s Office, the Law on Police, and other legislative acts on criminal investigation, all eight law-enforcement agencies¹ in Azerbaijan as well as prosecutor’s offices and tax authorities can initiate criminal investigations,

¹ Ministry of Interior, State Security Service, Foreign Intelligence Service, State Border Service, State Migration Service, State Customs Committee, Ministry of Justice, and Ministry of Emergency Situations

including against activists, journalists, and HRDs. Analysis of the cases of detained and subsequently imprisoned activists have clearly demonstrated that charges against them were determined during the investigation phase through forcible confessions resulting from acts of torture or threats, the fabrication of evidence, among others.²

Recommendations

Call on the Azerbaijani authorities to implement legal reforms with regards to national legislation and regulations covering the investigation phase in general, and, specifically, to:

- create a single, unified committee or body responsible for investigation;
- fully comply with the Council of Europe’s Committee of Ministers’ call to adopt effective and comprehensive measures to ensure the independence of the General Prosecutor’s Office; and,
- release and fully rehabilitate arbitrarily imprisoned HRDs, journalists, bloggers, youth activists, and religious activists.

III. Freedom of Association

In line with international standards, Article 58 of the Constitution of the Republic of Azerbaijan recognises the right to freedom of association. However, authorities have failed to bring corresponding national legislation in line with international standards. In fact, legislation restricting the exercise of this freedom was adopted in 2009 and further limitations were implemented with the 2014-2015 amendments. Despite widespread criticism, the legal framework remains in force as such. The legislation imposes significant limitations to non-governmental organizations’ legal ability to register as legal entities; to access grants, donations, and other financial support from foreign sources; and to generally operate independently.

Moreover, the often vague and overly-restrictive legislation paves the way for politically-motivated administrative and criminal prosecution of civil society actors. For example, the legislation directly enabled the still ongoing criminal investigation lodged in 2014 against several local and international non-governmental, and donor organisations, on alleged grounds of “suspicious elements” in their activities. Some human rights activists still await the reversal of previous convictions and the expungement of their criminal records, despite more than ten judgements by the ECtHR that the convictions were politically-motivated and unlawful, and repeated calls by the Committee of Ministers of the Council of Europe to honour those judgements. Until the convictions are quashed and the criminal records deleted, the HRDs are prevented from exercising their civil and political rights, e.g. taking the Bar exam necessary to obtain a licence to practice human rights law. The bank accounts of NGO leaders or their organisations remain frozen, and some face international travel ban.

² International Partnership for Human Rights, Due Diligence LLP, Truth Hounds, Human Rights Club, Civic Solidarity Platform, ‘Azerbaijani government crackdown in Ganja: extrajudicial killings, torture, arbitrary detention, unfair trials and unlawful restrictions on the freedom of Assembly,’ <https://www.humanrightsclub.net/en/prisoners/2020/new-report-azerbaijani-government-crackdown-in-ganja/>; Working Group on Unified List of Political Prisoners, ‘A Unified List of Political Prisoners in Azerbaijan,’ 20 February 2019, <https://www.humanrightsclub.net/wp-content/uploads/2019/02/Political-Prisoners-Report-Azerbaijan-WG-20.02.2019.pdf>

○ *NGO Registration*

While registration with the state is not compulsory for Azerbaijani NGOs,³ meaning informal activities without legal status are possible and are not considered illegal, in practice obtaining such a status is necessary to carry out basic NGO activities. For example, the legal status is a pre-condition for opening a bank account and receiving funding from donors.⁴

In order to acquire legal status under the Law on Non-Profit Organisations (Public Unions and Funds) (hereafter “Law on NGOs”) and the Law on State Registration and Registry of Legal Entities, applications have to be submitted to the Department of Registration and to the Notary of the Ministry of Justice. While the requirement for applications to include the statute of the organisation, its founding documents, proof of address, and proof of paid fee are not problematic in themselves, the Department frequently denies registration based on alleged shortcomings, even when all necessary documents have been submitted. The ECtHR has issued several rulings in this regard. Moreover, if NGOs do manage to register, Article 9(3)-9(4) of the Law on State Registration and State Registry of Legal Entities dictate that they are obliged to register any and all amendments to the founding documents with the Ministry of Justice.⁵ Failing to do so within 40 days of statutory amendment will result in an automatic penalty without any opportunity to rectify the shortcoming.⁶ As such, this article is rather punitive in nature rather than aiming to promote regulatory compliance with the law. For example, having to register the changing number of volunteers⁷ creates a disproportionate administrative burden for NGOs.⁸⁹ Since the legal amendments were adopted, the discouraging framework has corresponded with a drastic decrease in applications to register NGOs in Azerbaijan.

While local NGOs can work *de jure* without registering, foreign ones cannot.¹⁰ In order to operate in Azerbaijan, branches or representations of foreign organisations need to conclude an agreement with the Ministry of Justice,¹¹ forming an additional hindrance to their registration. Moreover, according to Article 12(3) of the Law on NGOs, such an agreement has to have an expiration date,¹² a regulation that may negatively affect the multi-year activities of foreign NGOs even if they manage to register. Since the 2013 amendment, the Law on NGOs dictates that the operation of representatives of foreign NGOs without state registration creates a liability. Article 582 of the Code of Administrative Offenses provides a legal basis to fine individuals up to 3000 AZN (approx. 1600 EUR) and legal entities up to 8000 AZN (approx. 4300 EUR) if they operate in Azerbaijan without obtaining state registration.¹³

³ Zohrab Ismayil, Ramute Remezait, ‘*Shrinking Space for civil Society in Azerbaijan – Tackling restrictive laws, Criminal prosecutions, Tax penalties*,’ June 2016, p.9, <https://www.irfs.org/news-feed/shrinking-space-for-civil-society-in-azerbaijan/>.

⁴ *Id.*, p.10.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Id.*, p.17.

⁸ *Id.*, p.11.

⁹ With amendments brought on 17 December 2013, only persons whose names are listed in the founding documents and volunteering agreements can participate in the activities conducted by registered NGOs. This amendment provides the grounds to collect information about individuals intending to be involved in civic activities, including participating in protests and campaigns. While legally limiting the number of citizens who can engage in NGO activities, it also instils fear among those who would like to volunteer, effectively isolating human rights NGOs further from the general public.

¹⁰ Zohrab Ismayil, Ramute Remezait, ‘*Shrinking Space for civil Society in Azerbaijan – Tackling restrictive laws, Criminal prosecutions, Tax penalties*,’ June 2016, p.11, <https://www.irfs.org/news-feed/shrinking-space-for-civil-society-in-azerbaijan/>.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Id.*, p.18.

○ *Access to Funding for NGOs*

In addition to the effective pre-requisite of registration, other legislation in force related to accessing funding hinders the financial independence of NGOs. Amendments made to the Law on Grants on 17 October 2014 and to the Regulation on Registration of Foreign Grants adopted by the Cabinet of Ministers on 22 October 2015 have created additional obstacles for NGOs to access funding.

The amendments imposed a further burdensome procedure for NGOs to be able to access donor funding. Since the amendment, not only does the local NGO have to register with the responsible authorities, but the donor organisations themselves need to obtain permission from the Ministry of Finance.¹⁴ Moreover, Article 2(5) of the Law on Grants dictates that foreign legal entities need to obtain the Azerbaijani government's approval for the proposed grants,¹⁵ and the same article dictates that the executive authority will decide on the "financial-economic reasonability of the grant" before the donor can obtain the right to give a grant.¹⁶ The Law obliges foreign donors to obtain permission for each and every grant they wish to give. If the permission is given, the foreign donor must register the grant with the Ministry of Justice.¹⁷ If both requests are approved by the Ministry, the local recipient NGO in turn has to register the grant agreement with the Ministry of Justice.¹⁸ According to Article 432(1) of the Code of Administrative Offenses, failure to submit the relevant grant agreement to the Ministry for registration within 30 days following the signature of the agreement can result in a fine up to 7000 AZN (approx. 3700EUR).¹⁹ Furthermore, according to Article 3(3) of the Law on Grants,²⁰ the Ministry of Finance may decline the donor's application if the grant aims to support activities in an area deemed to be covered by the State—a problematic determination for human rights-related activities. As of today, it is not proven possible to ascertain whether any donor organisation has successfully met all of these legal requirements since the amendments entered into force in 2015. As such, local NGOs' ability to effectively conduct their activities is further hampered by the next-to-impossible obstacles to obtaining the financial support they need to operate, and constitutes a contributing factor to the violation of the right to freedom of association.

○ *Operational Barriers for NGOs*

As a result of amendments made to the Law on NGOs on 28 December 2015, the Ministry of Justice adopted rules on "Studying the Activities of Non-Governmental Organisations, Branches or Representative Offices of Foreign Non-Governmental Organisations,"²¹ regional departments of the Ministry of Justice are obliged to analyse the activities of registered NGOs twice a year.²² Under the same rules, the Ministry has the right to engage with representatives and experts of other organisations or state bodies²³—a competence that allows wide discretion to authorities to exercise a strict control of, and no safeguard for NGOs.

Additionally, the rules allow the Ministry of Justice to conduct planned and unplanned inspections of the activities of registered NGOs. Planned investigations must be notified seven days in

¹⁴ *Id.*, p.12.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Id.*, p.13.

¹⁸ *Id.*, p.12.

¹⁹ *Id.*, p.17.

²⁰ *Id.*, p.13.

²¹ *Id.*, p.16.

²² *Ibid.*

²³ *Ibid.*

advance.²⁴ Unplanned inspections rely on information governmental organisations receive directly; information disseminated in mass media; through appeals made by legal entities or individuals; and possible violations suspected by the Ministry of Justice itself.²⁵ Such an inspection legally requires advance notification of one day. According to Article 580 of the Code of Administrative Offenses any barrier to the ability of Ministry of Justice officials to conduct an inspection into an NGO's activities can amount to a fine of 3000 AZN (approx. 1600 EUR).²⁶

○ *Reporting Requirements for NGOs*

According to Article 29 of the Law of NGOs and Articles 13-14 of the Law on Accounting Registry, NGOs must report quarterly to the Tax Agency, the State Statistical Committee, and the Social Protection Fund. Additionally, annual reports must be submitted to the Tax Agency, the Social Protection Fund, and the Ministry of Finance. Failure to comply with these overly-burdensome reporting requirements results in penalties, including substantial fines or the suspension or shut down of the NGO's activities.

Recommendations

Call on the Azerbaijani authorities to:

- bring national legislation and regulations into compliance with international standards, the recommendations of the Venice Commission, and the recommendations of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), by, inter alia, simplifying the registration procedure for local NGOs and foreign NGOs; abolishing disproportionate monetary penalties for violating requirements related to the activities of NGOs; removing the obligation for foreign donors to register with Azerbaijani authorities; limiting the conditions under which the Ministry of Justice can conduct unplanned inspections; and simplifying excessive reporting obligations;
- implement judgements of the ECtHR where violations of the right to freedom of association have been found;
- revoke travel bans and unfreeze bank accounts of civil society leaders;
- abstain from criminalising peaceful and legitimate activities of HRDs and civil society actors; and,
- close the criminal investigation lodged against several local and international non-governmental and donor organizations in 2014.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Id.*, p.18.

IV. Non-implementation of ECtHR Judgements

Currently, Azerbaijan is among the ten member states of the Council of Europe with the highest number of ECtHR cases pending effective implementation under assessment by the Committee of Ministers of the Council of Europe. Despite being the first and only member state against which infringement proceedings have been initiated, dozens of cases concerning Azerbaijan remain pending – meaning the decisions of the ECtHR have yet to be fully implemented by the national authorities. Human rights defenders' cases currently pending before the Committee relate to illegal actions by security forces; ineffective investigations; unlawful detention; protection of property rights; violations of the right to a fair trial; and violations of the freedoms of expression, assembly, and association.

Recommendations

Call on Azerbaijan to:

- immediately adhere to the unconditional legal obligation to implement judgements of the ECtHR related to HRDs, for example, in the case of Jafarov and others v. Azerbaijan;
- fully cooperate with the Committee of Ministers of the Council of Europe;
- issue full compensation to HRDs as awarded by the ECtHR without further delay;
- in line with the decisions of the Committee of Ministers of the Council of Europe, quash convictions of HRDs whose human rights violations were established by the ECtHR and expunge their criminal records.