

# EHRAC Bulletin



In partnership with Memorial Human Rights Centre (MHRC), the Georgian Young Lawyers' Association (GYLA) and Article 42 of the Constitution

## The role of the ECtHR in the implementation of freedom of association in Azerbaijan

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Despite the problems that civil society continues to face in Azerbaijan, the number of NGOs has been growing rapidly since the country's independence in 1991. As a member of the Council of Europe (CoE), the Government of Azerbaijan undertakes to respect individuals' right to exercise freedom of association, as well as other rights and freedoms under the ECHR. Given that problems with exercising these rights and freedoms exist in Azerbaijan, the Parliamentary Assembly of the CoE, which reviewed

Azerbaijan's application for CoE membership in June 2000, noted that Azerbaijan undertakes to "re-examine and amend, at the latest within one year of its accession, the rules governing registration of associations and appeals procedures."<sup>1</sup>

At the time of accession to the CoE in 2001 according to CoE Parliamentary Opinion 222(2000) Azerbaijan undertook the following commitments regarding freedom of association:

*"...to re-examine and amend the law on media and to turn the national television channel into a public channel managed by an independent administrative*

*board; to re-examine and amend the rules governing registration of associations and appeals procedures..."<sup>2</sup>*

However, Azerbaijan undertook obligations not only before the CoE, but also the European Union. Azerbaijan is a member of the European Neighbourhood Policy (ENP) programme and signed the Action Plan within the ENP. An important part of the Action Plan is dedicated to Azerbaijan fulfilling human rights obligations:

*"Priority area 3 – Promote the growth of civil society and its organised forms (human rights NGOs, associations, etc). Al-*

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*leviate the current cumbersome procedures required for NGO registration...*<sup>3</sup>

Azerbaijan ratified the ECHR on 15 April 2002. Art. 11 ECHR says that 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 protection of his interests.

The decisions of the ECtHR on violations of freedom of association in Azerbaijan have played an important role in changing legislation and improving procedures for enjoying the freedom of association. For instance, in *Ismayilov v Azerbaijan* (No. 4439/04) 17/1/08 the applicant complained about the significant delays to State registration of an association named Humanity and Environment, of which he was a founder. The ECtHR held unanimously that there had been a violation of Art. 11 ECHR and awarded Mr Ismayilov €1,000 non-pecuniary damages. The ECtHR found that the Law on State Registration of Legal Entities of 6 February 1996 did not afford sufficient protection against delays in the State registration procedure caused by the Ministry's failure to respond to registration requests within the statutory time limits.

According to the report of the CoE Commissioner for Human Rights, Thomas Hammarberg, on his visit to Azerbaijan on 3-7 September 2007, under

the Law on State Registration of Legal Entities, any organisation must register under the Ministry of Justice in order to be set up as a legal entity.<sup>4</sup> Where registration is denied the authorities cite procedural shortcomings. Further, the authorities should respond within thirty days of an application being made, however this is most often delayed. In a recent judgment (*Nasibova v Azerbaijan* (No. 4307/04), 18/10/07) the ECtHR ruled that delaying registration outside the time prescribed by law constitutes a *de facto* refusal to register an association. These significant delays interfere with the right to associate freely. The ECtHR confirmed its stance in *Ismayilov v Azerbaijan* (No. 4437/04) 17/1/08. The Commissioner therefore urges the Ministry of Justice to deliver its replies in the time prescribed by law.<sup>5</sup>

However, there have also been positive developments for NGOs in Azerbaijan. On 27 July 2007 the President signed a decree confirming State support for NGOs and establishing the State Council for Support to NGOs. According to the decree the State will provide financial assistance to NGOs in such areas as the protection of refugees and displaced persons, the integration of Azerbaijan into the world community, the strengthening of cooperation with international organisations and foreign NGOs, the development of political, legal and civil culture, the development of citizens' awareness of the law and human rights, the expansion of

the freedom of speech and the protection of health.

In conclusion, there are a number of problems, both in legislation and practice, in relation to freedom of association in Azerbaijan, particularly for civil society organisations. However, we can find some optimism in the adoption of new laws which help develop NGOs, such as the Law on State Registration of Legal Entities, and the establishment of the State Council of Support to NGOs, which has adopted many of the international community's recommendations. We have to be thankful to the international community and particularly to the CoE, ECtHR and the Commissioner for Human Rights for their contributions in issuing decisions and reports about strengthening freedom of association in Azerbaijan and in assisting the Government of Azerbaijan to address the problems they have identified.

1 PACE, 2000. Opinion No 222: Azerbaijan's application for membership of the Council of Europe, [Online]. Available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/t00/EOP1222.htm>.

2 Ibid.

3 European Commission, EU/Azerbaijan Action Plan, [Online]. Available at: [http://ec.europa.eu/world/enp/pdf/action\\_plans/azerbaijan\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/azerbaijan_enp_ap_final_en.pdf).

4 Council of Europe Commissioner for Human Rights, 20 February 2008. Report by the Commissioner for Human Rights, Mr Thomas Hammarberg on his Visit to Azerbaijan, [Online]. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1251577&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

5 Ibid.