

# SHRINKING SPACE FOR CIVIL SOCIETY IN AZERBAIJAN

Tackling restrictive laws  
Criminal prosecutions  
Tax penalties

№	"Anıq hesablaşmalar" hesablaşmaları	İstisna		VMT məbləği	Maliyyə sanksiyası	Faiz
		Əlavə məbləğ	Artıq məbləğ			
0.00	559.04	0.00	0.00	58.1	229.84	0.00
0.00	1748.76	0.00	0.00	18.1	893.13	0.00
0.00	1980.23	0.00	0.00	58.1	999.12	0.00
0.00	229.91	0.00	0.00	58.1	114.56	0.00
0.00	0.00	0.00	0.00		40.00	0.00
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Dövr	Maliyyə sanksiyası



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müəyyən etdi:

Azərbaycan Respublikası Baş Prokurorluğunun Ağır cinayətlərə dair işlər üzrə istintaq qrupunun rəisi, istintaq qrupunun rəhbəri, III dərəcəli dövlət ədliyyə müşaviri Eldar Əhmədov 142006023 nömrəli cinayət işi üzrə müxtəlif xarici donor təşkilatlarından qrant vəsaitləri almış fiziki şəxslər Cəfərov Natiq Məhəmməd oğlu, İmranova Aynurə İmran qızı, Bağirova Gülnarə Xətun qızı, "Qafqaz media tədqiqatları mərkəzi", "Demokratik təsisatlar və insan hüquqları", "Media və ictimai təşəbbüslər mərkəzi", "İqtisadi tədqiqatlar mərkəzi", "İqtisadi və sosial işlər mərkəzi", "Nefitçilərin hüquqlarının müdafiə təşkilatı", "Azərbaycan hüquqçular assosiasiyası", "Demokratik jurnalistika məktəbi" ictimai birlikləri, "Amerikan hüquqşünaslar assosiasiyası" və "Chemomics International" təşkilatlarının Azərbaycan Respublikasındakı nümayəndəlikləri, onlarla qarşılıqlı maliyyə əməliyyatları aparmış şəxslərin gəlir mənbələrinin, hesablarının və əməliyyatlarının, donor təşkilatlar tərəfindən ayrılmış qrant vəsaitlərinin cəmlənməsini, dövlət qeydiyyatına alınmadan fəaliyyətlərinin qanuniliyinin, mühasibat kitabının mövcud qanunvericiliyin tələblərinə uyğun aparılıb-aparılmamasının, qrant vəsaitlərinin müvafiq icra hakimiyyəti orqanlarında qeydiyyata alınub-alınmamasının, əməliyyatları barədə dövlət orqanlarına hesabatlar təqdim edib-etməmələrinin, daxil olan vəsaitlərin hərəkətinin, qrant layihələrində iştiraklarının, aparılmış təsəvvüfat əməliyyatlarının şübhəli üzvləşdirilməsi keçirilməklə maliyyə vəsaitlərinin xərclənməsini təyinatının, vergi qanunvericiliyinin tələblərinə riayət edilib-edilməməsinin, sair daxil olmaların təyinatının qanuniliyinin və başqa xüsusiyyətlərin bütün fəaliyyət dövrləri üzrə Azərbaycan Respublikası

- «İqtisadi Tədqiqatlar Mərkəzi» ictimai birliyinin sədri Bayramov (İbad oğlu) Qubad İbad oğlu 130.700,79 manat
- Lixtenşteyn Knyazlığının Açıq Cəmiyyət İnstitutu Yardım Fondunun Azərbaycandakı nümayəndəliyi 103.780,16 manat
- ABŞ-m «Amerika Hüquqşünasları Assosiasiyası» (ABA CEELI) təşkilatı 400.236,49 manat
- ABŞ-in "World Vision International" Humanitar Təşkilatının Azərbaycandakı nümayəndəliyi 606.799,16 manat
- Fiziki şəxs İbrahimova Nərin Tofiq qızı 70 manat
- Fiziki şəxs Əliyev Əmir İldırım oğlu 577,4 manat
- ABŞ-in "Chemomics International" Celli Inc təşkilatının nümayəndəliyi 507.945,64 manat
- ABŞ-in "Fridrix Nazariyev Kaliforniya Demokratiya İnstitutunun" (NDI) Azərbaycan Respublikasındakı nümayəndəliyi 26.858 manat
- "Şərq-Qərb Araşdırmalar Mərkəzinin" səbbəsi Oruçlu Ərəsteyn 73.037,18 manat
- "Fridrix Nazariyev Kaliforniya Demokratiya İnstitutunun" (NDI) fiziki şəxslər Səbuhi Nazir 5 manat

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Təqdim olunmuş materialardan görünür ki, 142006023 nömrəli cinayət işi Azərbaycan Respublikasının bir sıra qeyri-hökumət təşkilatlarının, xarici qeyri-hökumət təşkilatlarının filial nümayəndəliklərinin fəaliyyətlərində aşkar edilmiş qanun pozuntuları faktı üzrə Azərbaycan Respublikası CM-nin 308.1, 313-cü və digər maddələri ilə istintaq olunur.

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*The report has been prepared by independent experts  
Zohrab Ismayil and Ramute Remezaite, in cooperation with  
a number of human rights lawyers in Azerbaijan.*

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# SUMMARY

In 2014-2016, Azerbaijan's civil society has faced its darkest days since the country's independence in 1991 as the Government has greatly escalated its repression against its critics. Initiation of a joint criminal case by the prosecutor office against a number of local and foreign NGOs operating in Azerbaijan in April 2014 led to de facto closure of many leading human rights NGOs, with their bank accounts seized, leaders and staff members being interrogated, and even detained and convicted to lengthy prison sentences under charges stemming from alleged failure to register grants, or travel bans imposed. The report finds that at least 29 independent NGOs have been affected by the criminal persecution (Annex 1). All foreign organisations were forced to close down their offices in Azerbaijan while domestic NGOs stopped their operation due to their leaders being imprisoned or in exile, seizure on their bank accounts, ongoing criminal proceedings.

Along the criminal prosecution of NGOs, a large number of domestic and foreign NGOs have been subjected to tax proceedings leading to heavy fines imposed under the domestic tax legislation. The tax investigations stem from same alleged failure of NGOs to register grants with the Ministry of Justice. At least 10 foreign and 17 domestic organisations were handed huge financial penalties by the tax authorities (Annex 2). Along that, series of domestic laws regulating NGO operation were amended creating burdensome and complicated registration and reporting procedures and further strengthening the authorities' control over NGO activities in Azerbaijan.

Against this background, the report analyses recent legislative amendments related to NGO operation and its implication on NGOs in practice. The report groups the legislative amendments as follows: burdensome procedure for state registration; new obligations for donors willing to provide grants to Azerbaijani NGOs; new requirements for grant registration and the registration of service agreements limiting NGOs' access to funding; regulation granting excessive powers to the authorities to control NGO activities; increased administrative liability to NGOs. The report continues with the chronicles of cases of 9 NGOs that have been subjected to criminal prosecution and tax inspections:

- Center for National and International Studies
- Democracy and Human Rights Resource Centre
- Democratic Institutions and Human Rights Public Union
- Public Association for Assistance to Free Economy
- Economic Research Center
- Azerbaijan Lawyers Association
- Oil Workers Rights Protection Organization
- Media Rights Institute
- Caucasus Media Investigations Center

The report also documents cases of 4 human rights defenders and NGO leaders – Rasul Jafarov of the Human Rights Club, Intigam Aliyev of the Legal Education Society, Emin Huseynov of the Institute for Reporters' Freedom

and Safety and Anar Mammadli of the Election Monitoring and Democracy Studies Center - who were subjected to criminal prosecution to illustrate a pattern of persecution of individuals under criminal justice system.

The report acknowledges the recent positive developments leading to the release of a number of imprisoned NGO leaders, human rights defenders and journalists, including Intigam Aliyev (chairman of Legal Education Society), Rasul Jafarov (chairman of Human Rights Club), Anar Mammadli (chairman of Election Monitoring and Democracy Studies Center), Leyla and Arif Yunuses (Institute for Democracy and Peace) and investigative journalist Khadija Ismayilova. Many more critical voices however remain behind bars and new arrests have already followed the recent releases. NGOs have not yet been able to restore their activities due to overly restrictive laws and policies.

At the time of the publication of the current report, the following organisations still have their bank accounts seized:

- i. Legal Education Society (Intigam Aliyev)
- ii. Unregistered Human Right Club (Rasul Jafarov – personal accounts)
- iii. Institute for Reporter’s Freedom and Safety (Emin Huseynov)
- iv. National and International Study Center (Leyla Aliyeva)
- v. Democracy and Human Rights Resource Center (Asabali Mustafayev)
- vi. Azerbaijan Lawyers Association (Annagi Hajibeyli)
- vii. Media Rights Institute (Rashid Hajili)
- viii. Rights Protection and Enlightenment Society (Elchin Sadigov)

The report recognises the importance of the role that Azerbaijan’s international partners, including the Council of Europe, the United Nations, the European Union, the International Financial Institutions, the Extractive Industries Transparency Initiative (EITI), the Open Government Partnership (OGP) and the United States, play in promoting the respect for human rights and democratic values. It reiterates how crucial it is to place the issue of human rights at the core of their partnership with the Government of Azerbaijan and provides recommendations to them and to the Government of Azerbaijan.

# I. INTRODUCTION AND METHODOLOGY

Azerbaijan's civil society has been devastated by the government's unprecedented crackdown in the last couple years and remains very fragile to date. The repression has reached its peak in the summer of 2014 when many outspoken human rights NGOs were forced to close down or cease their activities and prominent human rights defenders got arrested after having been subjected to a criminal investigation under charges stemming from alleged failure to acquire state registration and/or register foreign grants. On 22 April 2014, a criminal case Nr. 142006023 has been initiated by the General Prosecutor Zakir Garalov on the basis of the information received from the Ministry of Justice (MoJ) on alleged irregularities in the activities of a number of domestic and foreign NGOs. This led to the 'criminalisation' of their human rights activities, seizure of their bank accounts, interrogations of NGO leaders and staff, imposition of travel bans or escape from the country to seek for refuge abroad. Restrictive amendments to laws regulating NGO activities and the use of rule of law and the judiciary for political persecution have paved the way for the destruction of the civil society in Azerbaijan.

Along the criminal prosecution of the civil society, a large number of domestic and foreign NGOs have been subjected to tax inspections leading to heavy fines under the domestic tax legislation. Dozens of domestic and foreign organisations were handed huge financial penalties by the tax authorities. All foreign organisations subjected to such inspections were forced to close down their offices in Azerbaijan whereas many domestic NGOs stopped their activities.

Although there have seen some positive developments in the country in March and April 2016 with the release of a number of political prisoners, including the country's leading human rights defenders Intigam Aliyev, Rasul Jafarov and Anar Mammadli, it is highly doubtful if this is a sign of the government's genuine willingness to move towards a systemic change aimed to improve the human rights situation in the country. Many more political prisoners, including the REAL political movement leader Ilgar Mammadov, journalist Seymur Hazi and youth activist Ilkin Rustamzade, remain behind bars at the time of the writing of this report. The popular revolving door principle has again been used by the authorities to guide its repression as new arrests continue in Azerbaijan. Furthermore, restrictive legislation allowing for a broad discretion of the authorities over the NGO operation leaves no space for human rights NGOs to restore their activities.

Against the background of Azerbaijan's blatant failure to uphold its human rights commitments, the report summarises and analyses the latest legislative developments on NGOs, including those adopted in 2015, and chronicles cases of human rights NGOs affected by the persecution. Being aware of the existence of reports and other publications documenting individual cases of human rights defenders, journalists and critical voices, the authors of the report aimed to focus on compiling comprehensive information on the cases of NGOs as institutions subjected both to the criminal persecution and tax proceedings and demonstrate how it affected their organisational existence. The report finds that at least 29 domestic NGOs have been subjected to the criminal prosecution and at least 10 foreign and 17 domestic NGOs underwent tax inspections leading to financial sanctions. The report also covers a number of cases of individual human rights defenders and NGO leaders who have been jailed, banned from leaving the country, forced to flee Azerbaijan or otherwise affected by the crackdown.

The cases covered in the report are in no way exhaustive and are aimed to demonstrate the pattern and the nature of the prosecution. The report has been prepared by an Azerbaijani policy analyst and human rights defender Zohrab Ismayil and an independent human rights lawyer Ramute Remezaite, in close cooperation with a number of human rights lawyers in Azerbaijan who did not want to disclose their identity. The analysis has been conducted based on the desk research of the current domestic laws, official documents, court decisions and information received through numerous interviews with representatives of NGOs affected by the crackdown, human rights defenders and lawyers.

Interviews with representatives of 11 NGOs that have been subjected to criminal prosecution, interrogations, travel bans, freezing of bank accounts, excessive search at the border crossing points and tax penalties were carried out to gather information for the report:

- Democratic Institutions and Human Rights Union chaired by Elchin Abdullayev
- “Doctrine” Journalists’ Research Center chaired by Jasur Mammadov
- Economic Research Center chaired by Galib Bayramov
- Caucasus Media Investigations Center chaired by Anar Orujov
- Democracy and Human Rights Resource Public Union chaired by Asabali Mustafayev
- Society and Civil Relations Development Public Union chaired by Ahmad Abbasbeyli
- Center for National and International Studies chaired by Leyla Aliyeva
- Protection of Oil Workers Rights Organisation chaired by Mirvari Gahramanli
- Media Rights Institute chaired by Rashid Hajili
- Young Leaders Education Training and Development Public Union chaired by Sabina Alakbarova
- Media and Public Initiatives Center chaired by Samir Aliyev

The first part of the report analyses the legislative developments of the recent years and attempts to assess the potential impact on NGOs. The second part of the report documents in great detail the cases of NGOs and their leaders and representatives affected by the crackdown. The report concludes with recommendations to the Government of Azerbaijan and the international community.

## II. SOCIAL, ECONOMIC AND POLITICAL BACKGROUND

Azerbaijan is situated in a politically complicated region. Since its independence from the Soviet Union in 1991, the country has been involved in the everlasting Nagorno Karabakh conflict with Armenia, backed by Russia, which resulted in the loss of part of Azerbaijan's territories and a huge number of internally displaced people on both sides. This has dramatized social problems in the country. Geographically, the country is located between Russia and Iran but politically - between the West and Russia. Despite the fact that Azerbaijan has attracted huge Western investment to oil and gas sector and established partnerships with the US and the EU on energy, politically, the country is still dependant on Russia.

Over the last 10 years, the country accumulated about \$105 billion to State Oil Fund from international oil-gas projects, 66% of which has been spent without any remarkable economic progress seen on the ground.<sup>1</sup> The recent decline of oil prices caused socio-economic crises in the country. The government spent a significant portion (65%) of the foreign currency reserves in 2015 to support the exchange rate of the national currency.<sup>2</sup> Despite that, the national currency devaluated by 97% during the same period. In the first four months of 2016, GDP declined by 4.5%. The consequences of the crisis are especially noticeable in the non-oil sector as the non-oil GDP shrank by 6.8%.<sup>3</sup> The beginning of 2016 witnessed social unrest and protests in over 10 regions of the country as a response to social problems and unemployment. The average monthly salary in Azerbaijan is \$323, lower than in any neighboring country. Currently, the Government of Azerbaijan is in the process of seeking for the budgetary support and investment from the international financial institutions.

As reported by various international organisations, Azerbaijan is one of the most corrupted and unfree countries in the world<sup>4</sup>. According to local human rights defenders, about 80 political prisoners remain behind bars, including the prominent opposition politician Ilgar Mammadov. The magnitude of political persecutions dramatically increased after 2009 when the Government amended the Constitution abolishing the presidential term limits and securing stability for the incumbent President Ilham Aliyev. Consequently, the same year has witnessed the first restrictive amendments to the NGO and grant legislation, the compatibility of which with human rights standards has been questioned by the Venice Commission<sup>5</sup>.

Soon after the presidential elections in October 2013 when the incumbent President Ilham Aliyev secured his third time presidency for the first time in the history of Azerbaijan, a prominent civil society activist and election monitor Anar Mammadli was detained. Until his arrest on 16 December 2013, Anar Mammadli led the Election Monitoring and Democracy Study Center, the only NGO that has systematically monitored country's elections

<sup>1</sup> [http://www.oilfund.az/en\\_US/hesabatlar-ve-statistika/son-reqemler.asp](http://www.oilfund.az/en_US/hesabatlar-ve-statistika/son-reqemler.asp)

<sup>2</sup> [http://www.oilfund.az/en\\_US/hesabatlar-ve-statistika/son-reqemler.asp](http://www.oilfund.az/en_US/hesabatlar-ve-statistika/son-reqemler.asp)

<sup>3</sup> <http://www.stat.gov.az/macroeconomy/indexen.php>

<sup>4</sup> <https://www.transparency.org/cpi2015#results-table>; <https://freedomhouse.org/report/freedom-world/2015/azerbaijan>; <https://www.amnesty.org/en/countries/europe-and-central-asia/azerbaijan/report-azerbaijan>; <https://www.hrw.org/europe/central-asia/azerbaijan>

<sup>5</sup> Venice Commission opinion No. 636/2011 on the compatibility of with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, 14-15 October 2011.

since 2000. A week later, on 23 December 2013, when the world's eyes were focused on Maydan events in Ukraine, the Azerbaijani Government adopted further amendments to NGO laws establishing huge penalties for civil society organisations for failing to comply with restrictive regulations.

The political intolerance to critical civic society in fact started earlier. On 14 March 2013, in an interview with the state AzerTac News Agency, the Head of the Presidential Administration Ramiz Mehdiyev accused local and foreign NGOs of engaging in activities outside their mission<sup>6</sup>. During 2013-2015, Mehdiyev made several public statements on the civil society organisations accusing them of being the fifth column of the Western governments. Many experts consider those statements to be a green light given to the law enforcement authorities to proceed with the crackdown on civil society. Apart from NGOs, the independent media outlets such as the Radio Free Europe/Radio Liberty and Meydan TV have also been targeted by the Government for their critical reporting on the public policies.

According to the 2015 World Bank's report on Azerbaijan, the environment for civil society appears to have become more restrictive due to a number of new amendments to the laws on NGOs, which came into force in 2014:

*“The new regulations limit the activity of both local and foreign NGOs, and impose increased penalties for failure to register grants, noncompliance with or inaccurate financial reporting. The regulations also limit cash donations, and increase the monitoring of foreign funding of bank accounts of all NGOs by the Central Bank of Azerbaijan. While on paper the actions of the government toward civil society seem to foster transparency and accountability of the NGO sector, in practice they appear to be limiting the activities of domestic and foreign NGOs”<sup>7</sup>*

The international reaction to the crackdown was not adequate or timely and did not lead to any determined steps to respond to it. Many international organisations and Western governments wondered what the reasons for such a harsh crackdown were to understand the developments in the country. The first conclusive decision came from the Extractive Industry Transparency Initiative (EITI), which decided to downgrade Azerbaijan's status from 'member' to a 'candidate' on 14 April 2015 as a response to the dire developments on the ground<sup>7</sup>. Later, on 8 October 2015, Clare Short, the President of EITI visited Azerbaijan and met with President Aliyev where the latter 'undertook to resolve the issues raised by the EITI Board on civil society participation'<sup>8</sup>. Also, according to the EITI President, the President explained the shirking space for NGOs to be the result of geopolitical problems.<sup>9</sup> On 4 May 2016, the Steering Committee of the Open Government Partnership (OGP) decided that 'Azerbaijan will be regretfully designated as inactive in OGP, due to unresolved constraints on the operating environment for non-governmental organizations'<sup>10</sup>.

The international reactions and interactions with the Government of Azerbaijan have obviously made considerable progress since December 2015. Since then, 18 political prisoners including prominent human right defenders Intigam Aliyev, Anar Mammadli, Rasul Jafarov and Leyla Yunus have been released. The courts, by the request of the Prosecutor Office, lifted arrest on bank accounts of 12 NGOs, including all members of the NGO Coalition for EITI, whereas accounts of 8 NGOs still remain seized. The Council on State Support to NGOs established a group to address the issues raised by NGOs, which however de facto stopped its work after the elections of new members to the national NGO coalition to EITI. This however cannot be taken as signs of the government's readiness for substantial reforms as the revolving doors principle has proved to be back: very restrictive laws remain enforced practically preventing NGOs from operating and new arrests of government's critics followed soon after the release of the above mentioned political prisoners.

<sup>6</sup> Interview with Ramiz Mehdiyev, the Head of the Presidential Administration, 14 March 2013

<sup>7</sup> <https://eiti.org/news/azerbaijan-downgraded-candidate-country>

<sup>8</sup> <https://eiti.org/news/eiti-chair-meets-azerbaijan-president-ilham-aliyev>

<sup>9</sup> [http://www.bbc.com/azeri/azerbaijan/2015/10/151013\\_clare\\_short\\_int](http://www.bbc.com/azeri/azerbaijan/2015/10/151013_clare_short_int)

<sup>10</sup> OGP Media Briefing: Azerbaijan made inactive in Open Government Partnership, 4 May 2016

## III. LATEST RESTRICTIVE LAWS AFFECTING NGO OPERATION

This chapter summarises and assesses the latest legislative amendments to laws regulating NGO operation adopted 2013-2015, which greatly impeded the right to freedom of association in Azerbaijan. It covers issues such as registration of domestic and foreign NGOs, access to funding and operational barriers. The report argues that the amendments further restricted the already hostile legal environment for NGOs and created additional impediments to effective NGO operation in Azerbaijan.

17 December 2013 marked the adoption of the first package of comprehensive amendments to a number of laws regulating NGO activities, which entered into force on 3 February 2014 with the adoption of the presidential order<sup>11</sup>. This has been followed by another set of amendments adopted on 17 October 2014 resulting in further regulations on NGOs. In 2015, series of rules have been adopted to secure the implementation of the new laws on funding to NGOs: a) On 5 June 2015, the Cabinet of Ministers adopted new rules on registration of grant agreements<sup>12</sup>; b) On 21 October of 2015, the Cabinet of Ministers adopted a decree on “On registration of contracts on provision of services and works at the expense of foreign financial sources by non-governmental organizations, as well as branches or representative offices of foreign non-governmental organizations”<sup>13</sup>; and c) On 22 October 2015, the Cabinet of Ministers approved the “Procedure on obtaining the right to give a grant by foreign donors in the territory of Azerbaijan”<sup>14</sup>.

### 3.1. Barriers to Entry: stringent legislative requirements on state registration and wide discretion of the authorities in applying them on human rights NGOs

**Although the domestic laws do not prohibit NGO operation without state registration, in practice, NGOs cannot operate effectively as they cannot receive foreign funding, open a bank account and enjoy other prerequisites of a legal entity.**

The current registration procedures for NGOs are regulated by two laws: the Law on Non-Profit Organizations (Public Unions and Funds)] (hereinafter - Law on NGOs)<sup>15</sup> and Law on State Registration and Registry of Legal Entities (hereinafter – Law on State Registration)<sup>16</sup>. Both laws have undergone numerous modifications resulting in a stringent legislative framework for NGOs in Azerbaijan. According to Law on State Registration, domestic NGOs can operate without state registration; only commercial entities and branches and representative offices of

<sup>11</sup> The Law of Azerbaijan on Making Amendments to the Law “On non-governmental organizations (public unions and funds)” dated on 17 December 2013 (№ 849-IVQD), The Law of Azerbaijan on Making Amendments to the Law “On State Registration of Legal Entities” dated on 17 December 2013 (№ 848-IVQD), and the Law of Azerbaijan on Making Amendments to the Law “On Grant” dated 17 December 2013 (№ 852-IVQD)

<sup>12</sup> Adopted by the decision No 216 of the Cabinet of Ministers dated 5 June 2015

<sup>13</sup> <http://e-qanun.az/framework/31456>

<sup>14</sup> <http://e-qanun.az/framework/31488>

<sup>15</sup> <http://e-qanun.az/framework/511>

<sup>16</sup> <http://e-qanun.az/framework/5403>

foreign legal entities must obtain state registration in order to operate legally. Although absence of the legal entity status does not establish any liability for local NGOs, it severely impedes their effective operation as it prevents them from receiving foreign funding from a number of major donors, open a bank account, enjoy tax benefits or engage in a number of financial and other activities.

As for foreign NGOs, the amendments to the Law on NGOs of 17 December 2013 establish that operation of branches and representatives of foreign NGOs and commercial entities without state registration creates liability. According to Article 582 of the Code of Administrative Offenses, their operation in Azerbaijan without state registration leads to administrative penalty in the amount of 2000-3000 AZN for individuals and 5000-8000 AZN for legal entities.

The current legislation grants the Ministry of Justice a wide discretion in denying NGO applications for state registration, especially in terms of human rights NGOs. This has led to a huge number of NGOs denied of registration and acting as unregistered groups in Azerbaijan, which later faced criminal prosecution as a result of that.

New amendments to the Law on State Registration established that regional departments of the Ministry of Justice are entitled to proceed with the state registration of NGOs. It can be perceived as a positive step in terms of reduction of costs and time of the registration process organizations established in the regions of Azerbaijan that want to obtain legal entity status. Before the amendments, all NGOs had to apply for registration in the centralized registration department in Baku.

On 19 February 2014, during an official meeting, the Ministry of Justice noted that there were more than 4100 NGOs operating in Azerbaijan. Only a limited number of NGOs however are able to function effectively and display a sound capacity<sup>17</sup>. This number includes other types of non-commercial organizations, such as education institutions, sport associations, cultural organizations, etc.

For comparison, in the neighbouring Georgia, which has a rather simple NGO registration procedures, there were at least 20,206 registered non-profit organizations in 2014 and 18,733 at the end of 2013. In Estonia, with its population of 1,3 million, featured by the highest level of sustainability among Central and Eastern Europe and Eurasia countries in the USAID CSO Sustainability Index, there are more than 30,000 NGOs, which benefit from a supportive legal environment, infrastructure, and public image and are strong advocates and service providers<sup>18</sup>. Azerbaijan's 4100 NGOs for a 9 million inhabitants cannot effectively represent the population's civic initiatives<sup>19</sup>.

**NGOs are obliged to register every single change to founding documents or factual prerequisites with the Ministry of Justice and obtain an extract of a registration certificate in order to continue operation. It is prohibited to operate without such an extract. A failure to comply with the regulation leads to administrative liability.**

According to the new amendments to the Law on "State Registration and State Registry of Legal Entities" of 17 December 2013<sup>20</sup>, all NGOs in Azerbaijan are required to register all changes to the founding documents or prerequisites with the Ministry of Justice (MoJ) and to obtain an extract of their registration certificate from the in order to be able as legal entity. The law stipulates that any changes such as change of address, change of number of members, change of chairperson, change of phone numbers NGOs shall be presented for registration. NGOs should submit all documentation for registration of changes in their founding documents no later than 40 days of those changes in the founding documents or facts. Registration departments shall register the changes in 5 days if no deficiencies identified. A failure to do so leads to administrative penalty. Furthermore, NGOs are forbidden

<sup>17</sup> USAID CSO Sustainability Index for Central and Eastern Europe and Eurasia 2014

<sup>18</sup> <https://www.usaid.gov/europe-eurasia-civil-society>

<sup>19</sup> [https://www.usaid.gov/sites/default/files/documents/1863/2010complete\\_document.pdf](https://www.usaid.gov/sites/default/files/documents/1863/2010complete_document.pdf)

<sup>20</sup> Article 9.3 and 9.4

to operate on the basis of non-registered facts or information. Only upon confirmation of registration of such changes, NGOs can freely enjoy the benefits of its legal entity status, such as the use of bank accounts or signing grant agreements.

The respective amendments have already severely hampered the effective operation of some of the NGOs. For example, Public Association for Assistance to Free Economy (PAAFE) has been denied registration of its changes 7 times during 8 months in 2014 under arguments such as the application being wrongly signed by a founder and not a chairperson who has been given authorisation in the documents enclosed to the application. PAAFE appealed such denials to the domestic courts, which further upheld the position of MoJ. In that way, PAAFE has been prevented from acting as a legal entity, including signing grant agreements, receiving grants or conduct bank operations for over 2 years now as it has not been able to obtain an extract of a registration certificate from MoJ since then.

If any of such unregistered changes are revealed by the authorities (e.g. during inspections, review of application of registration of other changes), NGOs will automatically receive a monetary penalty without an opportunity to rectify the shortcomings. The new regulation clearly has a punitive aspect rather than the one to promote regulatory compliance with the NGO law.

Such a new regulation creates a very burdensome procedure for NGOs to follow and is not compatible with the self-governing nature of NGOs. In practice, it results in NGOs having to apply for registration of various facts recorded during registration, such as number of members, factual address and other factual changes for multiple times.

**Foreign NGOs willing to operate in Azerbaijan are required to enter into an agreement of a limited duration with the Ministry of Justice and to obtain an approval of the authorities on NGO's compliance with criteria, such as "respect for national and moral values of Azerbaijani nation". A failure to do so leads to heavy financial penalties.**

The February 2014 amendments to Article 12.3 of the Law on NGOs introduced a requirement for a registration agreement between the Ministry of Justice and a foreign NGO to have an expiration date. Such agreements had been required since 2009, but there has not been any regulation on their duration. Therefore, at least potentially, agreements between a foreign NGO and the Ministry could have been indefinite (although very few, if any, agreements of that type exist in practice). This new provision may severely affect the work of NGOs if the limited duration of agreements of foreign NGOs with the MoJ would not cover the entire period of multi-year projects.

The amendments to the Law on State Registration established that a number of branches or representatives of foreign NGOs is to be limited to one in the territory of Azerbaijan<sup>21</sup>. The state registration of branches and representatives of foreign non-commercial legal entities in Azerbaijan is only possible after the agreement signed with the Ministry of Justice. The new amendments further require that a deputy head of a branch or representative of a foreign non-commercial legal entity is an Azerbaijani citizen and documents confirming his/her appointment must be presented to the Ministry during the registration process<sup>22</sup>.

These recent amendments did not substantially address the issues of NGO registration raised by the Venice Commission as newly established procedural rules further contributed to a rather burdensome registration process for NGOs. Such regulations do not comply either with the standards of the European Convention on Human Rights or the recommendations of the Council of Europe Committee of Ministers on "Legal status of non-governmental organizations in Europe" which is requires that rules should encourage the formation and activity of NGO<sup>23</sup>s.

<sup>21</sup> Article 4.2-1 to Law on State Registration, 17 October 2014

<sup>22</sup> Article 6.1.6.

<sup>23</sup> Article 8 of Recommendation 14

## 3.2. Access to funding

**Access to funding has been severely restricted with the latest legislative amendments adopted in 2015<sup>24</sup>. Current legislation establishes a 3-step burdensome procedure for an NGO grant to be finally registered and accessible to NGOs.**

Now, both donor organisations and grant recipients are obliged to obtain a permission from responsible state authorities in order to be able to provide/implement a grant/project in Azerbaijan:

- A donor organization needs to obtain a permission/opinion to provide a grant to an NGO from the Ministry of Finance
- An NGO or a branch of a foreign organization - grant recipient needs to obtain registration for a grant agreement from the Ministry of Justice
- An NGO or a branch of a foreign organization needs to register every service agreement signed with any foreign organization, company and individual with the Ministry of Justice before any action can be taken

### 3.2.1. Obligation for donor organizations to obtain a right to provide grants to NGOs

The amendments of October 17, 2014 to the Law on Grants established a requirement for organisations willing to provide a grant to Azerbaijani NGOs to obtain a right to do so from the authorities<sup>25</sup>. It establishes that a financial economic relevance of such a grant by relevant executive authorities shall be assessed before a decision on a donor's request is made.

The rules of 22 October 2015 further establish the regulations on the operation of foreign donors in Azerbaijan. The new rules determine that foreign donors must obtain a permission to give a grant in Azerbaijan for each grant agreement individually. To acquire such a right, the opinion of the Ministry of Finance on financial and economic reasonability of such a grant is required. The new rules also apply to sub-grants, including any additional agreements or annexes of such grant agreements aimed at modifying grant agreements' duration, purpose and amount<sup>26</sup>.

In order to obtain the opinion of the Ministry of Finance, several documents, including a grant agreement, project duration, information about recipient background and requirements for sub-grants should be attached to the application introduced to the Ministry of Finance. This should also include a justification of financial and economic rationality of grants. Furthermore, founding documents of foreign donors, including a decision of establishment, statute and registration certificate together with the translated, notarized and legalized versions will be required for submission. Applications presented by foreign donors shall be considered by the Ministry of Finance within 15 days from their submission. If any additional investigation is required, this period shall be extended for 15 more days.

<sup>24</sup> See the introductory paragraph of this Chapter for references

<sup>25</sup> Article 2 of the Law on Grants: "branches and representations of foreign legal persons, registered in Azerbaijan and not being aimed at profit (branches and representations of foreign NGOs registered in the Republic of Azerbaijan on the basis of the agreement which is envisaged in the Article 12.3 of the Law of Non-Governmental organizations (Public Associations and Foundations) of the Republic of Azerbaijan) of foreign legal entities may act as a donor after obtaining the right to give a grant in the Republic of Azerbaijan. It is required an opinion on financial-economic reasonability of the grant by the relevant executive authority body for obtaining the right to give a grant."

<sup>26</sup> The rule regulates the registration of Agreements (decisions) on Receiving (Awarding) Grants by physical and legal entities, as well as sub-grant, grant additions, also in exclusion of the donations, assistance formalized in other forms for purposes as indicated in paragraph 1 of Article 1 of the Law (hereinafter the agreement (decision)). The requirements of the Rule on registering the grant agreements (decisions) also apply to sub-grants and additional contracts related to grant agreement (decision), changes to duration, purpose, the grant amount in the respective agreements.

According to Article 3.3 of the rules, if a grant is aimed to support activities in the area covered by the state, this may serve as a ground for dismissing the justifiability of financial and economic reasonability of a grant. Furthermore, an opinion on the financial and economic reasonability of a grant is rejected if the purpose and the justification of financial and economic reasonability of a grant are not clearly indicated.

Before the amendments on 17 December 2013 were introduced, donors were not required to obtain a permission from the authorities. Currently, there is no affirmative information about foreign donors who succeeded in obtaining the right to give grants after new rules have become effective in Azerbaijan. There are several foreign projects being implemented in Azerbaijan where grant agreements were approved by Cabinet of Ministers of Azerbaijan.

Such burdensome and restrictive requirements create further difficulties for NGOs in effectively operating their activities. The Venice Commission reiterates that, while foreign funding might give rise to some legitimate concerns, it shall not be prohibited unless there are specific reasons to do so. Even then, foreign funding should never be an object of an outright ban<sup>27</sup>.

### **3.2.2. Obligation to register NGO grant agreements with the Ministry of Justice**

It is obligatory for NGOs to register grant agreements with the Ministry of Justice in Azerbaijan. Amendments of 17 December 2013 to the Law on Grants prohibit NGOs to carry out any bank transactions and other operations on the basis of non-registered grant agreements<sup>28</sup>. Banking transactions shall be carried out on the basis of notification confirming registration of agreements. With the new rules, banks in Azerbaijan were instructed not to carry out any bank operations regarding grant amounts in bank accounts of NGOs. NGOs willing to instruct banks to conduct operations have to provide a confirmation of the Ministry on the registration of a grant.

In addition to the legislative amendments to the Law on Grants, on 5 June 2015, the Cabinet of Ministers adopted rules on registration of grant agreements. The new rules establish stricter and more burdensome regulations on NGOs aiming to register grants with the Ministry of Justice. It limits the period of application for registration since the signing of agreements to 15 days (compared to 30 days previously) and extends the period of notification on the decision over applications to 15 days, which can be extended to 15 additional days. In addition to a grant agreement, the new rules require NGOs to submit a number of other documents that have to be notarised or legalised and marked with apostille if produced abroad. It establishes a lengthy list of criteria to be met by applicants, which is to be investigated by the Ministry of Justice. The Ministry has a right to investigate all documents including on the relevance of activities to the NGO charter, and decline registration on such a basis.

With the new rules, the following documents are required for submission (as opposed to earlier required notarised copy of an agreement only):

- A copy of original documents, such as an agreement (decision) itself and the changes made to it or a project signed by parties for implementation
- A copy of a document confirming an identity of a natural person acting as a donor (recipient)
- A copy of the charter and the extract of the state register of legal entities except for a legal entity acting as a donor (recipient)
- A copy of a document bearing the required authority in case when an agreement (decision) is signed by a person other than a legal representative

<sup>27</sup> Venice Commission Opinion "On the Law On Non-Governmental Organisations (Public Associations and Funds) as Amended of the Republic of Azerbaijan" Adopted by the Venice Commission at its 101st Plenary Session (Venice, 12-13 December 2014. CDL-AD(2014)043). C. para 63.

<sup>28</sup> Article 5.5 of the Law on Grants

- A copy of a document confirming a grant issuing right of foreign donors in Azerbaijan
- A document confirming the submission of financial statements to the Ministry of Finance by an NGO or a branch or a representative office of a foreign NGO

In case of absence of original copies any of the above-mentioned documents, a certificate of documents approved by the public notary is required. As for documents in a foreign language, their certified translation by a public notary shall be attached. Documents issued abroad must be legalized by notary or by an apostille.

The new regulation aims at investigating the following issues by the registration authority:

- Compliance of submitted documents and the events to be held as a part of a project covered by the agreement with the laws of Azerbaijan, a charter of a recipient and the compliance of an agreement (decision) terms with the grant definition
- Compliance of Azerbaijan's state budget-funded grants with the scope of those grant issuing bodies
- Compliance of a grant recipient with the criteria stipulated by the grant legislation and acquisition of a grant from donors mentioned in the legislation
- Authorization of an individual signing the agreement (decision)
- Availability of the data concerning the failure to comply with the laws in Azerbaijan with the aim of preventing the financing of terrorism, legalizing other properties or the funds obtained by criminal means by a donor (recipient) acting as a resident in Azerbaijan
- Compliance of required documents with the rules and their accuracy
- A donor acting as a government agency to be added to the list stipulated by the legislation
- Terms for changing the allocation of grant funds, the sale and monetization of the assets obtained through grants not provided in an agreement (decision) whereas donor giving a written consent for this during the project implementation stage
- Accurate and clear expression of agreement (decision) provisions and clear demonstration of events planned for implementation of a project

The Ministry of Justice may refuse to register the grant in cases of shortcomings identified during respective examinations, information provided in the application or the attached documents are not accurate or failure to rectify revealed shortcomings within the specified period.

The new laws expanded the list of potential donors. According to new grant agreements registration procedures, now, any entity in Azerbaijan may provide a grant to both domestic and foreign individuals and legal entities. Before the amendments, only entities, acting as a charity or fund collection for project and programs that may be subject to provision of grant without gaining profit had the right to provide a grant.

### **3.2.3. Obligation to register service agreements by NGOs**

On 21 October of 2015, the Cabinet of Ministers adopted a decree establishing a new rule for NGOs to register each service agreement with the Ministry of Justice before it is enforced<sup>29</sup>. Just as envisaged in the registration procedures of grant agreements, NGOs cannot perform any bank or other transactions on the basis of unregistered service agreements.

According to the new decree, contracts on the provision of services and works at the expense of foreign financial

<sup>29</sup> Decree of 21 October 2015 "On registration of contract on provision of services and works at the expense of foreign financial sources by non-governmental organizations, as well as branches or representative offices of foreign non-governmental organizations". This rule has been adopted in accordance with the Article 24-2.1 of the Law on NGOs amended on 17 December 2013.

sources shall be submitted for registration to the Ministry of Justice. According to the amendments to the NGO Law of 17 October 2014, NGOs providing services and works without any contract or unregistered contracts shall be held liable under the Code of Administrative Offences<sup>30</sup>. The Code however does not establish any clear regulations on such violations. Its Article 432.4 only provides that banks and NGOs shall be fined from 5000 AZN to 15 000 AZN in case of carrying out any bank transactions or other operations related to unregistered grant contracts or decisions.

The registration procedure is very similar to the one applicable to the registration of grant agreements. Documents listed below shall be submitted to the Ministry of Justice for registration:

- Original copy of an agreement or changes to agreements signed by the parties; a copy of agreement shall be notarized. If agreement is concluded in a foreign language, a notarized translation of agreement shall be added. Documents issued in a foreign country shall be legalized and with an apostille
- Identification document of customers of foreign residence or persons without citizenship
- Registration and founding documents of commercial or non-commercial entities if customers are legal entities (commercial registration extracts, registration certificate)
- Assigned comprehensive information about services or works to be done by Contractor (purpose, start date and completion date of contract, expected outcomes, scope of beneficiaries, scope of work or services, place and amount)
- Information on other contractors if applicable

The Ministry of Justice will examine the following issues in the application during the period of 15 days:

- Accuracy and authenticity of documents submitted;
- Compatibility of services or works stipulated in an agreement with the Azerbaijani legislation and a charter of an organization;
- Authority of a person signing an agreement;
- As part of agreements, the status of submission of a financial report to the Ministry of Finance by NGOs;
- Availability of information about NGOs' failure to comply with the requirements of Law on "NGOs", Law on fight against funds or other property and laundering the financing of terrorism and the Law on Fighting the terrorism
- As a part of an agreement, compatibility of founding documents of NGOs with the legislation;
- Commercial and non-commercial nature of agreements.

### 3.2.4. Donations

In accordance with the amendments to the NGO Law of 17 October 2014, the definition of "donation" has been broadened<sup>31</sup>. According to Article 24-1.3 of the Law, NGOs are free to accept donations but they may not "either directly or indirectly, provide, propose or promise any material or other gifts, privilege or discount to the person providing donation or any other person in return for the donation received or promised to it" (Art. 24(1)2). It is not clear whether this provision would exclude donations provided in support of concrete project. Such donations shall obviously remain lawful. According to that amendments, donation might be provided by citizens of the Azer-

<sup>30</sup> Article 24-2.2 of the Law on NGOs

<sup>31</sup> The Law on amending NGO Law 1082-IVQD, 17 October 2014, Article 24

baijan, entity registered in Azerbaijan, branch or representative office of foreign entity (branch or representative office of non-governmental organization (NGO) of a foreign country registered in accordance with Azerbaijani legislation). Besides, in accordance with amendments to Article 24-1.5 of the Law, NGOs, as well as branches or representative offices of foreign NGOs shall submit information about amount of donation received and persons granting the donation to the Ministry of Justice based on the procedures defined by the Cabinet of Ministers. Bank or any other transactions shall not be conducted for donations, information on which has not been submitted.

The amendments adopted on 17 October 2014 introduced the obligation for NGOs to report all donations to relevant authorities (the amount of the received donation and the identity of the donor<sup>32</sup>. The amended Article 24(1)5 does not specify whether such reports shall be made separately for each and every donation or be part of the annual financial report. The latter option is clearly preferable, as the former one would be administratively demanding for NGOs and could again dissuade them from accepting donations (especially smaller donations). Moreover, the reporting obligation now applies not only to grants as such but also to sub-grants, other forms of assistance and amendments to grants, thus adding substantively to the administrative burden of NGOs, while the amendments also provide for sanctions for undertaking banking and other operations in relation to unregistered grants (2013 Amendments to the Code of Administrative Offences). These rules have made it impossible for NGOs that have been denied registration, to access funding in the form of sub-grants through registered organizations, a practice that has previously been used.

### 3.3. NGO Operational Barriers

**New rules grant extensive powers to the Ministry to conduct inspections into activities of NGOs aimed at assessing the ‘appropriateness of activities with NGO’s charter, ensuring transparency in the allocation of funds in accordance with the charter purposes of NGOs’**

In accordance with the amendments made to the Law on NGOs on December 28, 2015, the MoJ adopted rules on Studying the Activities of Non-Governmental Organizations, Branches or Representative Offices of Foreign Non-Governmental Organizations (hereinafter – Rules on studying NGO activities)<sup>33</sup>. The rules established the procedure for the MoJ to inspect the activities of local and foreign NGOs with offices registered in Azerbaijan. The rules grant extensive powers to the MoJ to conduct inspections into activities of NGOs with little safeguard against abusive application of the rules. While it remains unknown how the rules will be implemented in practice, they nonetheless creates a basis for unrestricted interference into the activities of NGOs by the authorities.

The new rules establish an obligation for all regional departments of the MoJ to provide results of analysis of NGOs activities to the MoJ twice a year (by 30th June and 30th December). The rules also allow the MoJ to engage representatives and experts of other organisations or state bodies. Such a new regulation raises a serious concern about the possible strict control of NGOs in the regions of the country by the MoJ.

The studying of NGO activities is aimed at assessing the compatibility of activities with NGO’s charter, ensuring transparency in the allocation of funds in accordance with the charter purposes of NGOs, ensuring registration of NGO members and organising meetings of the governing board, executive and monitoring bodies. Such analysis of the activities shall be conducted within the period of 30 days, which can be extended to 30 additional days if necessary.

Such studying of NGO activities can be planned and unplanned. Unplanned inspections can be carried out in

<sup>32</sup> Donations are received “as a transfer to the bank account of an NGO” (Art. 24(1)4). An exception is foreseen for donations not exceeding 200 AZN provided to NGOs/branches and representations of foreign NGOs which have charity as a primary purpose indicated in their Statutes. Since there is no special status of charitable NGOs foreseen in the Law on NGOs, this provision might be of uncertain application, factually dissuading NGOs from accepting cash donations.

<sup>33</sup> <http://e-qanun.az/framework/32061>, Article 30.1

cases when the relevant information is received by governmental organisations; information disseminated in the mass media; or appeals received by legal entities and individuals, and violations have been discovered by the MoJ, after at least one day notification is given to an NGO. In case of planned studying of NGO's activities, a 7-day notification shall be presented to an NGO.

**The new law limits citizens' civil engagement as only persons mentioned in the founding documents and volunteering agreements can participate in the operation of NGOs.**

With the amendments of 17 December 2013, a number of legal and physical persons participating in NGO activities have been limited. Only persons whose names are included to founding documents and volunteering agreements can participate in the operation of NGOs whereas before, any individual could participate in NGO activities without any formal relations with an NGO. This amendment clearly allows the authorities to collect all information about individuals involved in civic activities and limits citizens' opportunities to engage in NGO activities (e.g. participation in protests, actions or campaigns) and is directed at isolating NGOs from the wider society. The law provides that warnings shall be issued to persons rendering any help to NGOs without legalising their relations with them.

### 3.4. Increased Administrative Responsibility

**New laws establish increased administrative liability to NGOs that is not limited to high fines but may also lead to suspension of NGO activities for one year upon decision of the Court by a request of the MoJ.**

Last two years have witnessed the gradual increase of responsibilities for NGOs by the authorities. Amendments to the laws regulating NGO registration and their activities, including grant and donation regulations were made, established overly huge administrative penalties for actions of NGOs not compliant with the new legal regulations. Furthermore, certain violations may also lead to suspension of NGO activities for one year upon a court decision by a request of the MoJ.

According to Article 432.1 of the Code of Administrative Offenses, a failure to submit information about grants on time in the form established in the law by legal or natural persons or representatives and branches of legal entities registered in Azerbaijan is subjected to administrative penalties of up to 2000 AZN for natural persons, 1500-2500 AZN for persons holding official position and 5000-7000 AZN for legal entities<sup>34</sup>.

Another amendment establishes a huge administrative penalty for receiving grants or any other kind of financial assistance without grant agreements or grant decisions. Article 432.3 of the Code of Administrative Offenses provides for confiscation of all objects of material and financial assistance and an administrative penalty in the amount of 2500-5000 AZN for persons holding official positions and 8000-15000 AZN for legal entities. Furthermore, Article 432.4 of the Code of Administrative Offenses establishes administrative penalty for banks in the amount of 2500-5000 AZN for persons holding official positions and 5000-8000 AZN for legal entities in case of carrying out any kind of bank operations or other operations without grant agreements or decisions not registered in accordance to the Law on Grants.

New amendments to Article 579 of the Code of Administrative Offenses establish huge administrative penalties for all NGOs operating in Azerbaijan without the registration of any kind of changes to their founding documents or subsequent changes after registration, without existence of a registry of members of the organization, without the signing of volunteer agreements with volunteers, without spending funds generated via entrepreneurial NGO activities, for carrying out activities not compatible with NGO's charter. Administrative penalties vary from 1000 AZN to 2000 AZN for persons holding official posts and from 500 AZN to 3000 AZN for legal entities.

<sup>34</sup> Recipients of grants or donors of the Republic of Azerbaijan shall inform the MoJ in writing about grant agreements or decisions no later than 15 days of their signing or adoption.

In practice, MoJ officials are given a rather wide discretion to interpret the law. For example, officials can request NGOs to provide an official explanation on their keeping of funds in their bank accounts and not spending them during the existing year. There have already been cases when MoJ officials would officially request NGOs to provide reasons for them keeping funds in their bank accounts without spending.

One of the latest amendments relates to studying of activities of NGOs and representative and branches of international NGOs in Azerbaijan. Article 580 of the Code of Administrative Offenses establishes up to 2000 AZN administrative penalty for persons holding official posts and from 2500 AZN up to 3000 AZN for legal entities in case of occurrence of barriers for MoJ officials to conduct inspections into NGOs' activities. In practice, this means that such a law can lead administrative penalties for NGOs for a failure to introduce documents to MoJ or to organise a meeting with the MoJ officials in order for them to carry out inspections in the NGO's office.

According to Article 582 of the Code of Administrative Offenses, representative and branch offices of foreign NGOs are subjected to administrative penalties in case of operation without registration in Azerbaijan. Administrative penalties amount to 1000 AZN-2000 AZN for physical persons, 2000-3000 AZN for persons holding official posts and 5000-8000 AZN for legal entities.

Furthermore, NGOs and representative and branch offices of foreign NGOs can be suspended for one year by a court decision<sup>35</sup>. Grounds for suspension of NGOs' activities for one year include creation of problems in the situations of emergency, failure to eliminate violations identified by the authorities and in cases of violations of rights of the members carried out by the executive bodies of NGOs.

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<sup>35</sup> Amendments of 17 December 2013 to Article 31.3 of the Law on NGOs

## IV. NGOs SUBJECTED TO PERSECUTION AND THEIR CURRENT STATUS

The large scale persecution of local and international NGOs in Azerbaijan has been launched on 13 May 2014, with the criminal case Nr. 142006023 by the Prosecutor Office on Grave Crimes under Articles 308.1 (abuse of power) and 313 (service forgery) of the Criminal Code. As a result of that, starting from May 2014, dozens of local and foreign NGOs have been subjected to the following pressures:

- Seizure of NGOs' bank accounts and accounts of NGO leaders;
- Interrogation of NGOs leaders and staff members;
- Tax inspections into NGOs' financial activities leading to heavy penalties;
- Arrests and conviction of leaders of prominent human rights NGOs;
- Discriminatory documentary and physical checks of NGO leaders and staff members at border crossing points;
- Travel bans imposed on civil society members;
- Closure of local and foreign NGOs. (Annex 1)

The decision of the prosecution to initiate a criminal case refers to a letter of the MoJ informing the prosecution about the outcomes of inspections carried out into activities of the representative office of Oxfam and organisations and individuals as grant beneficiaries of Oxfam. According to the Ministry, a number of irregularities were identified in the activities of Oxfam, such as a failure to register grant agreements, to comply with the charter of the organisation, discrepancies in receipts and allocated grant amounts.

It has been noted that Oxfam allocated a huge amount of funds to the Aran Humanitar Regional Public Union, which is not a humanitarian NGO working on reducing poverty (which is the main Oxfam's objective). Oxfam argued that it modified its strategies and policies on Azerbaijan responding to the needs of local communities and in that way expanded its scope as the Azerbaijani legislation did not forbid Oxfam to work on different but related fields. Another 'irregularity' of Oxfam was the fact that it has allocated funds to the establishment of Baku office of the Revenue Watch Institute and the running of the office through Support to Economic Initiatives Public Union, which is a member of the National Budget Group of Azerbaijan. Furthermore, the prosecution claimed that Oxfam violated the law on mass media for allocating grants to media projects, such as "Obyektiv TV" and "Kanal 13" which have been co-founded by IREX, Institute for Reporters Freedom and Safety and Turan information agency. The grants were however aimed to fund specific public awareness projects but not the establishment of media organisations.

On 3 October 2014, the General Prosecutor Office applied to the Nasimi district court in order to carry out mandatory investigation activities with regard to the activities of individuals and NGOs who had received grants from foreign donor organizations, namely, Natig Jafarov, Aynura Imranova, Gulnara Baghirova, Caucasus Media Investigations Center Public Union, Democratic Institutions and Human Rights Public Union, Media and Pub-

lic Initiatives Center, Economic Research Center, Center for Economic and Social Development, Oil-Workers Rights Protection Organization, Azerbaijan Lawyers Associations, Democratic Journalist School, American Bar Association, and Chemonics International". The official appeal by Rustam Usubov, the first deputy of the General Prosecutor of Azerbaijan, to the court aimed to obtain authorisation for the inspection of activities of the respective individuals and organizations and the compliance with accounting regulations, assessment of purposes of activities of grants spent, compliance of all other activities of individuals and organisations with the laws, compliance of grant agreements and their registration with the laws, NGO compliance with tax regulations. The scope of the investigation was very broad covering undefined periods and areas of activities of Oxfam.

Furthermore, the General Prosecutor office established a group consisting of experts from the State Support Council NGOs, Ministry of Taxes and State Finance Department of Ministry of Finance in order to carry out inspections into activities of respective individuals and organisations. Soon after, systematic tax inspections were started. Dozens of NGO have been subjected to tax penalties.

On 3 October 2014, the Nasimi district court upheld the appeal of the deputy of the General Prosecutor allowing for the investigation into activities of mentioned individuals and organisations. The court's decision instructed the Grave Crimes Investigation Department of the General Prosecutor's Office to carry out the investigation<sup>36</sup>.

Tax inspections and tax penalties continued in 2015. In the letter No.142006023/1015 of 23 July 2015, the General Prosecutor informed the Ministry of Taxes about the ongoing investigation into activities of 31 individuals and NGOs and provided information about the amounts allegedly evaded as taxes by each individual and NGO. (Annex 2)

The report authors compiled information on the persecution of the following domestic NGOs:

## Center for National and International Studies

The Center for National and International Studies (CNIS) was founded in 2003 as a think-tank organisation focusing on issues of democracy, regional security, integration to EU and NATO in the South Caucasus<sup>37</sup>. CNIS is an active member of the Eastern Partnership Civil Society Forum and CIVICUS. In 2013-2014, the CNIS director Leila Aliyeva was a Steering Committee member of the Eastern Partnership Civil Society Forum (EaP CSF) and the coordinator of the Working Group 1 (Human Rights, Democracy and Good Governance).

In the last few years CNIS has been actively researching, running conferences and publishing books on the issues related to democracy development and human rights in the country. During the implementation of its projects, CNIS has often faced obstacles created by local or central authorities, such as preventing CNIS from renting venues in private hotels in Baku or holding events in the regions of the country. Leila faced serious pressure from the pro-governmental groups in the EaP CSF for the brochure on political prisoners in Azerbaijan, placed on the CSF website.

On 13 June 2014, the bank accounts of CNIS were frozen by the decision of the Baku Nasimi district court. The amount in the bank accounts was the last tranche of the project funded by the National Endowment for Democracy (NED) and the first tranche of the project of CASCADE consortium, which CNIS was a partner to<sup>38</sup>. The Court decision referred to the order of the Department on Grave Crimes of the General Prosecutor Office regarding the joint criminal case against NGOs under the charges of abuse of power and fraud.

All organization's staff, who at the time were or have been working for CNIS in the past, even a landlord of an

<sup>36</sup> No. 5(006)-536/2014

<sup>37</sup> More informational available on [www.cnis-baku.org](http://www.cnis-baku.org)

<sup>38</sup> CASCADE is an international EU-funded research project led by the Fondation Maison des Sciences de l'Homme

apartment where the office was located, were interrogated by the prosecution in December 2014 and February 2015. The CNIS accountant was interrogated more frequently and for longer periods at the Department for Grave Crimes of the Prosecutor General's Office. Investigators demanded the CNIS to provide research papers and accounting documents but by that time the office was emptied and CNIS director Leila Aliyeva was abroad so the prosecution did not get access to the documents. As the organization has been closed down during the crackdown in 2014, the tax authorities could not manage to conduct any tax inspections.

CNIS does not officially operate anymore and it cannot obtain a copy of the registration certificate from the authorities. Ms. Aliyeva claimed that this investigation was the order of the political authorities because of her activism and speeches given in international events. The seizure of bank accounts remains in force, the organization ceased its activities and Ms. Aliyeva has been in exile since September 2014.

## **Democracy and Human Rights Resource Center**

The Democracy and Human Rights Resource Center (DHRRC) was established in 2003 and is based in Sumgait, the third largest city of Azerbaijan. Main areas of its activity include protection of human rights through legal means, legal education and improving professionalism of lawyers. To date, the organisation filed 236 complaints to the European Court of Human Rights. Decisions have already been made on 30 of the complaints 62 complaints are currently at the stage of communication to the Government of Azerbaijan. Majority of these cases relate to violations of the right to freedom of assembly, the right to free elections and the right to not be tortured.

On 19 July 2014, the Baku city Nasimi district court, Sabail district court and Khatai district Court adopted individual decisions on seizure of all bank accounts of DHRRC and its chairman Asabali Mustafayev upon request of the Department for Grave Crimes of the Prosecutor General's Office. Furthermore, a travel ban was imposed on Asabali Mustafayev. At least 12 individuals working with the DHRRC, including lawyers, accountants, trainers, have been invited for interrogations. In August 2014, the Prosecutor General's Office seized all internal documents of DHRRC related to activities of the organisation in 2006-2014. Only in February 2016, some of the documents have been returned to the organisation and its chair had to sign a written commitment to provide the prosecutor office with the returned documents in case of necessity for further investigation in the future.

At the same time, Baku Tax Department carried out inspections into the organization's activities upon the request of the Prosecutor's Office. As a result of that, an order on the tax penalty was issued arguing that the organisation did not obtain a notification of registration of some grant agreements from the MoJ. Despite the fact that the information about the registration was placed in the website of MoJ, the tax authorities did not take that into account and established that the NGO allegedly failed to pay taxes in accordance to the legislation stemming from the absence of registration of grants. DHRRC would normally sign grant agreements of duration of 1-3 months and submit each agreement to the MoJ for registration. Each time, the MoJ assured the DHRRC that the information about the registration would be published on the website and that the NGO would not need to obtain a paper copy of notifications.

DHRRC appealed against the decision of the Tax Department to the domestic courts. The court however stopped the proceedings following a notification from the Prosecutor General's Office on the ongoing criminal investigation against DHRRC. The court proceedings have not been renewed yet.

DHRRC is currently struggling to obtain an extract of its updated registration certificate from the MoJ, which is obligatory for an NGO to be able to operate as a legal entity. The seizure of bank accounts remains in force, the NGO is not able to continue its activities and a travel ban handed to Asabali Mustafayev stays valid to date.

## Democratic Institutions and Human Rights Public Union

The Democratic Institutions and Human Rights Public Union (DIHR) was founded in 2006. DIHR focuses on the promotion and protection of human rights, including freedom of association and media rights, youth initiatives and social rights in Azerbaijan. It is a member of the NGO Coalition on EITI and Eastern Partnership Civil Society Forum.

On 24 July 2014, the Baku Sabail district court froze all bank accounts of the organisation and its chairman Elchin Abdullayev in three different banks (Bank Respublika, International Bank of Azerbaijan, and Zaminbank) by the request of the Prosecutor's Office. Along that, the tax authorities launched an inspection into the organisation's financial operations. As a result of that, the Baku Tax Department made a decision to penalise the organisation in the amount of 21,942 AZN. At the same time, on 19 October 2014, the Prosecutor Office launched a criminal case against the chairman of DIHR Elchin Abdullayev under charges of abuse of power, illegal entrepreneurship and tax evasion. After a year, the Prosecutor's Office temporarily stopped the criminal case because of Elchin's absence in the country.

At the moment, DIHR is not able to obtain its extract of the updated registration certificate from the MoJ, which is necessary for it to continue activities. DIHR submitted its application on obtaining such an extract in February 2016 and was forced to stop its activities pending its request.

On 30 March 2016, the seizure of bank accounts of DIHR has been lifted. DIHR however has not renewed its activities as Elchin Abdullayev has been in exile since August 2014.

## Public Association for Assistance to Free Economy

The Public Association for Assistance to Free Economy (PAAFE) was founded in 2004. It focuses on promoting transparency and accountability of the government, economic freedoms and respect for property rights<sup>39</sup>. PAAFE published over 22 papers and reports on the respective topics and initiated 27 strategic litigation cases on property rights before the European Court of Human Rights in the last years. PAAFE is the member of CIVICUS, Eastern Partnership Civil Society Forum, NGO Forum on Asian Development Bank, NGO Coalition on EITI and the National Budget Group.

On 7 July 2014, Baku court made a decision on the seizure of all PAAFE bank accounts (9085.39 EUR and 11097.92 AZN), at the request of the Prosecutor General's Office in a closed court hearing that the organization was not informed about. On 8 July 2014, the same court ordered the arrest of the bank cards and the personal bank accounts of Zohrab Ismayil, the chairman of the organization.

Since 20 July 2014, Zohrab was twice summoned to the Department for Grave Crimes of the Prosecutor General's Office for interrogation as a witness in the joint criminal case. The investigators' questions were related to PAAFE's activities regarding transparency, public finance and other activities, including the work of the National Budget Group. They asked Zohrab Ismayil about public outreach through media campaigns and debates and questioned their work on preparing recommendations for the government and other activities of PAAFE in the area of property rights.

On 31 July 2014, the Baku Audit Department of the Tax Ministry adopted a decision to begin a tax inspection of PAAFE. On 17 October 2014, the Audit Department issued a decision imposing a penalty in the amount of 16,300 AZN for alleged illegal use of grants by PAAFE over the past three years. Despite the fact that all grants of PAAFE have been legally registered and published on the website of the Ministry of Justice, the Audit Department still considered it to be illegal entrepreneurship activities according to the new law, which, in addition to

<sup>39</sup> More informational available on [www.freeeconomy.az](http://www.freeeconomy.az)

the registration process, requires for a special approval letter from the Ministry of Justice before a grant can be implemented (a notification letter). The law however came into effect in February 2014 and – in this case – it has been applied retrospectively. The previous law did not require for the “notification” for new grants.

On 14 April 2016, the court lifted the seizure on the organisational and personal accounts. Four days later, the Baku Tax Department withdrew 11,097.92 AZN from PAAFE’s bank account. The MoJ refused to register the results of the general election of the organisation since for 7 times June 2014. The organisation does not operate anymore and its chairman Zohrab resides abroad since August 2014.

## **Economic Research Center**

The Economic Research Center (ERC) was established in 1999. ERC is a policy-research oriented non-profit think tank with a mission to facilitate sustainable economic development and good governance in the new public management system of Azerbaijan<sup>40</sup>. The organisation published more than 50 papers on macroeconomic issues, transparency and accountability of the government, social programs, etc. ERC is an active member of EITI NGO Coalition, National Budget Group and Eastern Partnership Civil Society Forum. Its chairman Gubad Ibadoglu is a Board member of global EITI.

On 27 August 2014 and on 28 August 2014, the Baku Sabail district court and the Baku Nasimi district court made decisions on the seizure of all accounts of the ERC and its first chairman Gubad Ibadoglu respectively. The organisation had 15,000 AZN in its bank accounts at the time of the seizure. On 27 August 2014, Baku Tax Department decided to penalise the organisation in the amount of 134,960 AZN and demanded to pay it within 5 days without conducting any inspection.

During this period, the first chairman of the organization Gubad and the current director, Galib Bayramov were summoned for questioning by the General Prosecutor’s Office. They were interrogated on the Oxfam projects as witnesses.

On 13 May 2015, following the decision of the Narimanov district court of 17 April 2015, the prosecution conducted a search in the ERC’s office and seized all financial and organisational documents and computers. After that, all employees and contractors of the think tank were summoned for questioning by the Prosecutor’s Office. As a result of all that, Gubad was forced to leave the country and has been residing abroad since summer 2015.

On 30 March 2016, seizure of bank accounts of the organisation and personal account of Gubad Ibadoglu has been lifted. The prosecutor office however has not returned the seized organisational documents yet. The MoJ has refused to register the results of the last general assembly of the organisation, which in turn is not able to continue its activities.

## **Azerbaijan Lawyers Association**

The Azerbaijan Lawyers Association (ALA) was founded in 1997. The organisation’s main objective is to assist in democratic state-building, strengthening the rule of law and legal rules and increasing the legal literacy of the population. The Association is a member of the International League for Human Rights since 1999, the Bar Associations of the Black Sea Countries since 2000, the “Coalition of support for judicial reforms” of Azerbaijan Lawyers Forum and the Azerbaijani partner in the Human Rights House Network.

On 7 July 2014, the Baku Sabail district court seized the bank accounts of the ALA. Next day, the Baku Sabail

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40 More information available on [www.erc.az](http://www.erc.az)

district court seized the bank accounts of the ALA's chairman and human rights lawyer Annagi Hajibayli. After a while, the Baku Tax Department started an investigation into the organisation and made a decision to penalise the organisation in the amount of 4726 AZN. The tax authorities considered the grants as illegal entrepreneurship despite the fact that the grant agreements have been published on the website of the MoJ.

Annagi was summoned for questioning by the Prosecutor Office and later was subjected to a travel ban, which prevented him from travelling for a surgery abroad in 2015. Despite the fact that the NGO paid all imposed penalties, the authorities have not lifted his travel ban yet. The seizure of the bank accounts remains enforced as well. ALA therefore is not able to continue its activities.

## **Oil Workers Rights Protection Organisation**

The Oil Workers Rights Protection Organization (OWRPO) was established in 1996 to protect human rights of those working in oil and gas sector in Azerbaijan and to conduct control of civil societies over projects implemented in the energy sector of the country. OWRPO conducted numerous monitoring projects on labor rights in oil and gas companies, international financial institute's projects and published reports. The organisation is an active member of the NGO coalition on EITI, Eastern Partnership Civil Society Forum and CEE Bankwatch network.

All bank accounts of the OWRPO have been frozen by the Baku Nasimi district court's decision of 8 July 2014. The court has also later seized personal accounts of OWRPO's chairwoman Mirvari Gahramanli. The organization had 19,000 AZN in its account and Mirvari Gahramanli had 15,000 AZN, 15,000 USD and 10,000 EUR in her savings accounts. Soon after, the Prosecutor Office took all financial documents and Mirvari and Hamid Khalilov, the accountant of the organisation were summoned for questioning by the Prosecutor's Office. Baku Tax Department inspected the organisation and made a decision to penalise it in the amount of 79,679 AZN.

On 24 December 2014, by the request of the Prosecutor Office, the Nasimi district court lifted the seizure on organisational and personal accounts of Mirvari. She claims that the organisation has no tax penalty obligation to date. The Prosecutor General however mentioned the organization's name in his letter of 23 July 2015 to the Ministry of Justice as and NGO penalised by the Ministry of Taxes. The amount of the tax penalty of the organisation amounted to 79,679.81 AZN.

The organization successfully registered its new grant with the Ministry of Justice in October 2015 and obtained its updated extract of registration certificate from MoJ, which allows it to continue its operation.

## **Media Rights Institute**

The Media Rights Institute (MRI) focuses on the legal defense of freedom of expression in Azerbaijan. It aims to ensure favorable legal and policy environment for freedom of expression and media freedom by providing legal aid to journalists and bloggers whose rights are violated and monitors the legislation and policy developments on media freedom.

The bank accounts of MRI and its chairman Rashid Hajili have been frozen by the Baku Nasimi district court upon the request of the Prosecutor General's Office on 7-8 July 2014. The same month, upon request of the Prosecutor General's Office, the Baku Tax Department decided to initiate a tax inspection into MRI's financial operations. The organisation refused to provide documents to the tax authorities. Later, the tax inspection has been carried out in the form of the cameral inspection and the decision on tax penalty in the amount of 36,000 AZN was issued to MRI because the organisation allegedly implemented 5 grant agreements without obtaining registration notifications from the MoJ. Accordingly, the Tax authorities considered grant agreements as com-

mercial deals citing the MoJ letters stating that none of the grant agreements have been given notification about their registration. Later, following the appeal of MRI, the Baku Administrative Economic Court made a decision to eliminate the tax penalty.

Organisation's and its chairman's bank accounts remain frozen and the NGO does not operate anymore. Rashid Hajili had a travel ban for a long time but recently left the country and resides outside Azerbaijan.

## **Caucasus Media Investigations Center**

The Caucasus Media Investigations Center (CMIC) is an NGO working on the promotion of media rights, the strengthening of bilateral relations with the Azerbaijanis living in the Caucasus and relation of media and exchange of information in this area, including protection of journalists' rights. Chanel 13, the Internet TV channel is a well-known project of the organisation in Azerbaijan.

CMIC's bank accounts have been seized upon the request of the Prosecutor General's Office in August 2014. In 2014, CMRC was fined with 8,035 AZN for alleged tax evasion as a result of implementation of projects without notifications on their registration from the MoJ. During the criminal investigation, Anar Orujov, the chair of the organisation, and his brother Aziz Orujov have been summoned to the Prosecutor General's Office and have been detained for several hours without any official charges. Aziz Orujov was later again detained by the police for several hours and questioned about his brother.

Later in 2015, the seizure of bank accounts of the organisation has been lifted. CMIC however does not operate and its chairman Anar Orujov has been in exile since August 2014.

## **Other NGOs**

The courts adopted decisions on seizure of bank accounts of the Center for Economic and Social Development (CESD), Development of Society and Civil Relations Public Union (DSCR), Young Leaders Education Training and Development Public Union, Center for Toward to Civil Society, Media and Public Initiative Center, Women Association for Rational Development. Leaders of these organisations (Vugar Bayramov, Ahmed Abbasbeyli, Sabina Abdullayeva, Samir Aliyev and Shahla Ismayil) have been questioned by the Prosecutor Office and all financial documents have been taken by the investigators. Later on, the courts lifted the seizure on their bank accounts by decisions on 19 October 2015 (CESD) and on 30 March 2016. Currently, none of the organisations apart from CESD continue their activities.

At the time of the publication of the current report, the following organisations still have their bank accounts seized:

- i. Legal Education Society (Intigam Aliyev)
- ii. Unregistered Human Right Club (Rasul Jafarov – personal accounts)
- iii. Institute for Reporter's Freedom and Safety (Emin Huseynov)
- iv. National and International Study Center (Leyla Aliyeva)
- v. Democracy and Human Rights Resource Center (Asabali Mustafayev)
- vi. Azerbaijan Lawyers Association (Annagi Hajibeyli)
- vii. Media Rights Institute (Rashid Hajili)
- viii. Rights Protection and Enlightenment Society (Elchin Sadigov)

## V. CRIMINAL PROSECUTION AND CONVICTION OF NGO LEADERS

The government's crackdown on civil society has led to the arrest and imprisonment of leading human rights defenders and NGO leaders in the country. All the charges against them, such as illegal entrepreneurship, tax evasion, abuse of power and embezzlement, stemmed from their alleged failure to register grants received from foreign donors and operation without state registration in cases where such registration was not acquired by the NGOs due to government's repeated refusals or delays. Despite the fact that the domestic legislation does not establish any criminal liability for a failure to register grants with the Ministry of Justice and leads to administrative liability, Azerbaijan has used its NGO laws and the judiciary as tools to criminalise the activities of human rights NGOs.

The cases analysed below are not exhaustive and have been chosen as illustrative examples to demonstrate the pattern and the nature of the persecution where rule of law and the criminal justice system have been abused by the authorities.

Although the release of a number of imprisoned NGO leaders, including Intigam Aliyev (chairman of Legal Education Society), Rasul Jafarov (chairman of Human Rights Club), Anar Mammadli (chairman of Election Monitoring and Democracy Studies Center), Leyla and Arif Yunuses (Institute for Democracy and Peace) is highly welcome, their convictions have not been terminated and their criminal record remains in force. Intigam Aliyev and the Yunuses have been released on probation and continue serving their sentence outside the prison. Furthermore, dozens of political prisoners, including REAL Movement leader Ilgar Mammadov, journalist Seymur Hazi and youth activist Ilkin Rustamzade, remain behind bars as victims of the government's retaliation against its critics.

### **Anar Mammadli**

Anar Mammadli is a chairman of the Election Monitoring and Democracy Studies Center (EMDS), a leading non-governmental organization specialised in election monitoring. It was registered by the Ministry of Justice but its registration was soon withdrawn. The legality of the withdrawal is currently being reviewed by the European Court of Human Rights. Anar Mammadli is the winner of the Václav Havel Human Rights Prize 2014 awarded by the Council of Europe.

On 16 December 2013, Anar Mammadli was arrested under charges of illegal entrepreneurship, tax evasion and abuse of power, all stemming from EMDS operation without registration and alleged failure to register grants with the Ministry of Justice. The Center's executive director Bashir Suleymanli was also charged under those provisions. The factual basis for the charges related to Anar Mammadli having received money transfers under the grant agreements to his personal bank account and to the bank account of the registered International Volunteer Cooperation Organisation, as the Center was not a registered legal entity.

On 26 May 2014, Anar Mammadli was sentenced to 5,5 years under all charges. His appeals were dismissed both by Baku Appeal Court and the Supreme Court.



From the left Bashir Suleymanli, Anar Mammadli. Source: [www.rferl.org](http://www.rferl.org)

On 17 May 2016, Anar Mammadli was released under the Presidential pardon decree, after having spent over 2,5 years in prison. His criminal record however remains.

## Rasul Jafarov

Rasul Jafarov is the founder and the chairman of the NGO Human Rights Club (HRC) and a leading human rights campaigner. He is well known for the “Sing for Democracy” campaign that Rasul has coordinated, which used the European Song Contest held in Baku in 2012 as a platform to raise awareness about the human rights situation in Azerbaijan both domestically and internationally. Rasul has been actively engaged in the advocacy towards the Council of Europe and other regional and international bodies on the issue of political prisoners in Azerbaijan until he became one of them.

Rasul Jafarov was arrested on 2 August 2014 under the charges of illegal entrepreneurship, tax evasion and abuse of power for allegedly failing to register grants received from foreign donors for the human rights projects of the HRC with the Ministry of Justice and for running the HRC as an NGO without the state registration. On 12 December 2014, additional charges of misappropriation and service forgery were brought against him.

The charges against Rasul stem from the fact that the HRC had to operate as a non-registered NGO as the Ministry of Justice repeatedly refused to register the NGO each time identifying minor technical deficiencies allowing it to delay the definite decision<sup>41</sup>. Although the domestic law at the material time did not prohibit the existence and operation of NGOs without registration, absence of the status of a legal entity has greatly impeded the operation of the HRC as it could not acquire a bank account, effectively exercise its right to access funding, enter into contracts and other limitations. As a result of that, all the funds allocated to the human rights activities of the HRC were transferred to the personal account of Rasul Jafarov upon conclusion of grant agreements stipulating

<sup>41</sup> Rasul Jafarov brought a complaint on this issue to the ECtHR, which has already finalised the examination of the complaint and a judgment is awaited at the time of the writing of this report.



Third from the left: Rasul Jafarov

financial reporting requirements with donors. Although the domestic law did not provide for any procedure for the registration of individual grants, nor the liability for the failure to do so, Rasul Jafarov was accused of the above mentioned crimes for alleged failure to register the grants, which led to his imprisonment.

On 16 April 2015, he was sentenced to 6 years and three months and a ban to hold an official position in state or municipal bodies for 3 years was imposed. The trial has been carried out with numerous violations of fair trial.

On 17 March 2016, the European Court of Human Rights (ECtHR) found Rasul's arrest and detention unlawful and politically motivated: it concluded that Rasul's detention was aimed to silence and "punish the applicant for his activities in the area of human rights"<sup>42</sup>. It is the first time that the ECtHR found such a violation in relation to activities of human rights defenders.

The same day, Rasul Jafarov was released under the Presidential pardon decree, after having spent 19 months in prison. The ban to hold official position for 3 years remains valid and his criminal record has not been removed.

## Intigam Aliyev

Intigam Aliyev is a prominent human rights lawyer and the Chairman of the Legal Education Society in Azerbaijan. He stands behind round 130 cases pending before the ECtHR and has one over 20 cases against Azerbaijan, and

<sup>42</sup> Rasul Jafarov v Azerbaijan, No. 69981/14, 17 March 2016, para 16



From the left: Intigam Aliyev. Author Aziz Karimov

has been actively engaged in the human rights education of other lawyers in his country. His outstanding work has brought him several prestigious international awards, including the International Bar Association's Human Rights Award 2015.

On 8 August 2014, Intigam Aliyev has been arrested under charges of illegal entrepreneurship, tax evasion and abuse of power for allegedly failing to register grants of the Legal Education Society (LES) received from foreign donors. His office and home were searched the same and the following days and all the documents found in the office, including the case files of the applications pending before the ECtHR, were taken by the prosecutor's office<sup>43</sup>. This has prevented Intigam of accessing documents to be used as evidence to denounce the charges against him in the domestic courts. In December 2014, Intigam was additionally charged with misappropriation and official forgery.

The prosecution accused Intigam Aliyev of alleged failure to register 13 grants concluded with 7 different donors during the period of 2008-2013 with the Ministry of Justice. It also claimed that Intigam failed to register the fact of his re-election as the LES Chairman and therefore abused his power in signing grant agreements on behalf of the organization. The domestic courts upheld the allegations of the prosecution despite the fact that the requirement to register grants was established in 2009 and therefore not applicable to grants concluded in 2008. It also dismissed the defense arguments that the remaining grants were registered despite the fact that the record of the registration of the grants was established in the online public domain of the Ministry of Justice, which was

<sup>43</sup> ECtHR found the seizure of case files in violating the applicant's' rights in the case of Annagi Hajibeyli v. Azerbaijan and 28 other applications, nos. 2204/11



**Emin Huseynov.** Source: [www.cnn.com](http://www.cnn.com)

removed from its website just before the crackdown but a notarised cached copy presented by Intigam Aliyev and his defense team.

On 22 April 2016, Intigam Aliyev was sentenced to 7 years and 6 months in prison and banned on holding any official position for 3 years after his release. The trial resulted in numerous gross violations of fair trial guarantees, which further reinforced the political and punitive nature of the prosecution of Intigam Aliyev.

Although Intigam has been suffering from a number of serious diseases such as spinal alternation, poor circulation and kidney disorders, the authorities have failed to provide him with necessary medical treatment to date despite his numerous requests, including access to a doctor of his choice, which is established in the domestic court. Poor detention conditions, such as lack of proper ventilation, limited access to fresh air, lack of adequate lighting and passive smoking have further aggravated his health condition.

On 28 March 2016, Intigam Aliyev has been released on probation by a decision of the Supreme Court upon request of the prosecution to review the sentence. The court changed the sentence with a 5-year suspended sentence and ordered his immediate release. A travel ban to leave the country remains valid.

## **Emin Huseynov**

Emin Huseynov is a chairman and a co-founder of the Institute for Reporters' Freedom and Safety (IRFS), an NGO founded on World Press Freedom Day in 2006 by two Azerbaijani journalists, in response to growing government restrictions on freedom of expression and freedom of press. IRFS has been a member of the International Freedom of Expression Exchange (IFEX) since October 2007 and Global Network Initiative (GNI) since November 2012. Objective TV, one of its highly successful video reporting projects, has been given two international prizes (One World Media award and Fritt Ord Foundation and ZEIT Foundation Press Prize).

On 8 August 2014, the prosecutor office conducted a search in the IRFS premises and seized all the material and

equipment, including documents related to IRFS grants and implemented projects, as well as organisational documents and its stamp. The same day, Emin Huseynov went into hiding fearing arrest as a punishment for his human rights work, like in the case of other human rights defenders, and later sought refuge at the Swiss Embassy in Baku.

On 12 February 2015, the head of the press service of the Ministry of Foreign Affairs Hikmat Hajiyev told APA information agency that “Emin Huseynov, the citizen of the Republic of Azerbaijan, is charged under Articles 192.2.2 (illegal business), 213.2.2 (tax evasion) and 308.2 (abuse of official powers) of the Criminal Code by the Prosecutor General’s Office of the Republic of Azerbaijan, and a detention order was issued for him by court on August 19, 2014 and he has been declared wanted.” The statement said that Emin Huseynov, in his capacity as the chairman of IRFS, carried out illegal business activity under non-registered grant agreements, and has evaded payment of a significant amount of taxes. Emin Huseynov however has never received any official decision to charges him for the above mentioned offenses to date.

On 13 June 2015, Emin Huseynov was allowed to leave for Switzerland where he sought asylum. Soon after, he has been stripped of his Azerbaijani citizenship by the authorities.

## IV. CONCLUSIONS AND RECOMMENDATIONS

In the last couple years, Azerbaijan's civil society has faced the worst repercussions for its active human rights work since the country's independence in 1991 and the consequences will undoubtedly be felt for a long time. Dozens of NGOs have been subjected to criminal prosecution and tax inspections leading to de facto closure of NGOs and seizure of their activities, seized bank accounts, travel bans, huge tax penalties and even imprisonment of NGO leaders. Although the jailed NGO leaders, such as Rasul Jafarov, Intigam Aliyev and Anar Mammadli, have been released and some of the NGOs had the seizure of their bank accounts lifted, it is yet difficult to see such developments as the Government genuine readiness for substantial reforms. The domestic laws regulating NGO operation have been amended on numerous occasions further limiting the NGO space and expanding the authorities' discretion in applying the norms on organisations.

In 2014-2015, the laws have been further amended to curtail the exercise of freedom of association for NGOs. There is a strong concern, as documented by some cases in the report that the restrictive laws will lead to their selective application by the Ministry of Justice on active independent human rights organisations. The laws establish burdensome registration procedures both for NGOs to acquire a state registration and to register grants and for donor organisations to obtain a permission to allocate a grant. In case a donor obtains permission and a grant received by an NGO is registered by the MoJ, an NGO shall have to register every service agreement before it enters into force and the services can be provided. Such a lengthy and burdensome process at the discretion of the MoJ will certainly impact the ability of NGOs to operate swiftly and effectively and will severely limit their right to access funding. Furthermore, NGOs are obliged to register every single change to founding documents or prerequisites with the Ministry of Justice or otherwise face administrative liability. More importantly, it prevents them from effectively operating as a legal entity until an extract from the Ministry confirming registration of changes is received. The new laws grant extensive powers to the Ministry to conduct inspections into activities of NGOs aimed at assessing the 'appropriateness of activities with NGO's charter, ensuring transparency in the allocation of funds in accordance with the charter purposes of NGOs'. Failure to comply with any of the new regulations leads to increased administrative liability to NGOs that is not limited to high fines but may also lead to suspension of NGO activities for one year upon decision of the Court by a request of the MoJ.

The report found that at least 29 independent domestic NGOs have been subjected to the criminal prosecution and at least 10 foreign and 17 domestic NGOs underwent tax inspections leading to financial sanctions. This has severely limited if not eliminated the space for civil society, which has never been very enabling and vibrant in Azerbaijan. The recent release of several NGO leaders may ignite some hope for the restoration of independent civic engagement but this is severely limited by the new legislation.

The authors of the report believe that the worsening economic situation and the pressure of the international community have contributed to the recent positive developments. Strong stance demonstrated by OGP in inactivating Azerbaijan's membership or by EITI in downgrading Azerbaijan's membership to 'a candidate' are good examples proving that concrete tangible actions against the Government of Azerbaijan as a response to persecution of the civil society are possible. Azerbaijan has crossed its red line a long time ago and there cannot be any

‘business as usual’ anymore when such severe human rights violations take place. The international community’s long acclaimed commitment to promote human rights in Azerbaijan should materialise into concrete actions against the Government if it does not urgently engage in substantial legislative and policy reforms.

## **Recommendations**

### **To the Government of Azerbaijan**

- Stop politically motivated legal proceedings against NGO leaders by terminating criminal prosecution and convictions, and tax inspections and lifting tax penalties;
- Enact amendments to the Code of Administrative Offenses, Law on Grant, Law on NGOs and other relevant laws to eliminate heavy penalties and obligations for NGOs and simplify regulations on access to funding;
- Enact clear grounds for refusal to register NGOs by eliminating a non-exhaustive list of ground for refusal of registration;
- Revoke requirements for re-registration procedure, imposing undue administrative burden on NGOs and allowing wide discretion for selective denial of registration of targeted organisations;
- Extend a visit to the UN Special Rapporteur on the rights to freedom of association and peaceful assembly to Azerbaijan and collaborate with the mandate, as well as with the Venice Commission, to engage in meaningful legislative and policy reforms in the respective field;

### **To the United Nations**

- Closely monitor the situation of NGOs and human rights defenders in Azerbaijan through the Universal Periodic Review mechanism, relevant treaty bodies and Special Procedures and call upon the Government of Azerbaijan to engage in meaningful reforms

### **To the Council of Europe**

- To urge Azerbaijan to ratify the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No.124);
- To review existing legislation with a view to bringing it into conformity with international human rights instruments regarding the rights to freedom of association by making use of the expertise of the Council of Europe, and in particular of the Venice Commission’s opinion on 14 December 2014;
- To take strong tangible measures against the Government of Azerbaijan as a member of the Council of Europe if no legal and policy reforms to improve the NGO situation are taken and harassment of critical voices and free media is not immediately stopped;

### **To the European Commission**

- To engage in further dialogue on the new Roadmap for a new framework agreement with Azerbaijan subject to substantial reforms enabling a right to freedom of association and the fundamental freedoms by the Government of Azerbaijan

- To increase the support to the civil society of Azerbaijan and enhance the civil society's participation in bilateral projects of EU with the Government of Azerbaijan.

## **To US Government**

- To increase the support to the civil society of Azerbaijan and enhance the civil society's participation in the USAID projects with the Government of Azerbaijan

## **To the World Bank, the European Bank for Reconstruction and Development, the Asian Development Bank and the European Investment Bank**

- In the process of allocation of loans, the World Bank, the European Bank for Reconstruction and Development, the Asian Development Bank and the European Investment Bank, and other international financial institutions must set a condition to the Government of Azerbaijan to improve legislation on NGOs, grants and access to information for the enhancement of the public participation in the project financed by IFIs;

## **To the Board of the Extractive Industry Transparency Initiative (EITI)**

- To adopt a separate working plan with Azerbaijani EITI Multi Stakeholder Group on implementation of SCO Protocol of EITI and conduct quarterly monitoring;
- To organise a high level visit to Azerbaijan and conduct negotiations with the Government of Azerbaijan on the enabling environment for civil society and legislative reforms in this regard;

## **To the Steering Committee of the Open Government Partnership (OGP)**

- To adopt specific recommendations for the Azerbaijani government related to the improvement of laws, regulatory acts and government's policy towards NGOs, access to grants, denotation, freedom of association, freedom of assembly, and access to information;
- To initiate and support the enhancement of policy dialogue between the Government of Azerbaijan and the independent civil society organisations for ensuring respect for freedom of association and the public participation in decision-making process.

## List of targeted NGOs and types of persecution

Nr.	Name of organisation	Responsible person	Seizure on bank accounts	Interrogation	Tax penalty	Criminal case	Travel ban	Arrest	Exile
1	Institute for Peace and Democracy* Women of the Caucasus for Peace and Democracy Society	Leyla Yunus	Red	Grey	Red	Green	Red	Yellow	Green
2	Election Monitoring and Democracy Study Center* <sup>a</sup>	Anar Mammadli	Red	Grey	Red	Green	Red	Green	
3	Human Rights Club*	Rasul Jafarov	Red	Grey	Red	Green	Red	Green	
4	Legal Education Society	Intigam Aliyev	Red	Grey	Red	Green	Red	Yellow	
5	Institute Reporter' Freedom and Safety	Emin Huseynov	Red	Grey	Red	Red	Green		Green
6	National and International Study Center	Leyla Aliyeva	Red	Grey	Red	Red			Red
7	Public Association for Assistance to Free Economy	Zohrab Ismayil	Red	Grey	Red	Red			Red
8	Economic Research Center	Gubad Ibadoglu	Green	Grey	Red	Red			
9	Media Rights Institute	Galib Bayramov	Red	Grey	Green	Red	Green		Red
10	Democracy and Human Rights Resource Center	Rashid Hajili	Red	Grey	Red	Red			
11	Azerbaijan Lawyer Association	Asabali Mustafayev	Red	Grey	Red	Red			
12	Oilworkers' Rights Protection Organisation	Annagi Hajibayli	Red	Grey	Red	Red			
13	Democracy and Human Rights PU	Mirvari Gahramanli	Green	Grey	Red	Green			
14	Caucasus Media Investigations Center	Elchin Abdullayev	Red	Grey	Red	Red			Red
15	International Cooperation of Volunteers PU	Anar Orujov	Green	Grey	Red	Green			Red
16	Women Association for Rational Development	Elnur Mammadov	Red	Grey	Red	Red	Red	Yellow	
17	Aran Humanitarian Regional Development Organisation	Shahla Ismayil	Red	Grey	Red	Green	Green		
18	Intelligent Citizen Enlightenment Center	Rauf Aliyev	Red	Grey	Red	Red			
19	Media and Public Initiatives Center	Hasan Huseynli	Red	Grey	Red	Green		Green	
20	East-West Study Center*	Samir Aliyev	Green	Grey	Red	Red			
21	Center for Economic and Social Center	Arastun Orujlu	Red	Grey	Red	Red			
		Vugar Bayramov	Green	Grey	Red	Green			

22	Toward Civil Society Center	Abil Bayramov								
23	Development Society and Civil Relations Public Union	Ahmed Abbasbeyli								
24	Young Leader Education, Training and Development PU	Sabina Alakbarova								
25	Democratic Journalism School	Rovshan Hajiyev								
26	Legal Protection and Enlightenment Society	Elchin Sadigov								
27	“Doctrine” Journalists’ Military Research Center	Jasur Mammadov								
28	Center for Innovations in Education	Ulviyya Mikayilova								
29	Society for Democratic Reforms*	Ogtay Gulayiyev								

*	Organisation without registration
	Problem exist
	Problem solved
	Conditionally released
	Don't continue

List of international organisations, foreign and domestic NGOs subjected to tax penalties in 2014–2015 and their current status

Nr.	Name of organisation	Responsible person	Threats	Amount of net tax penalty* AZN	Current status
	<b>International organisations</b>				
1	Oxfam Great Britain	Shovkah Alizade	Criminal case Interrogation of staff	797,835.64	Office closed S.Alizade in exile
2	Friedrich Ebert Foundation	Rashad Huseynli	Interrogation	207,704.90	Office closed
3	Friedrich Naumann Foundation	Yasemin Pamuk Sabuhi Gafarov	Interrogation	21,108.16	Office closed S.Gafarov in exile
4	International Research & Exchanges Board (IREX)	Angela Nicoara	Criminal case Seizure on accounts Interrogation of staff	436,574.94	Office closed Seizure on bank accounts remains
5	Open Society Institute Assistance Foundation (OSIAF)		Criminal case Seizure on accounts Interrogation of staff	103,780.16	Office closed Seizure on bank accounts remains
6	American Bar Association (ABA CEELI)		Criminal case Seizure on accounts Interrogation of staff	400,236.49	Office closed Seizure on bank accounts remains
7	World Vision International Humanitarian Organisation		Criminal case Seizure on accounts Interrogation of staff	606,799.16	Office closed Seizure on bank accounts remains
8	Chamonix International (USA)		Criminal case Seizure on accounts Interrogation of staff	507,945.64	Office closed Seizure on bank accounts remains
9	National Democratic Institute (NDI)		Criminal case Seizure on accounts	26,858.00	Office closed Seizure on bank accounts remains
10	Radio Europe/Radio Liberty	Khadija Ismaylova (former)	Criminal case Searching Seizure on accounts Interrogation of staff	45,145.63	Office closed Seizure on bank accounts remains Some of the journalists continue the work K.Ismaylova conditionally released Travel ban remains

<b>Domestic NGOs</b>						
1	Women of the Caucasus for Peace and Democracy Society	Leyla Yunus	Criminal case Seizure on accounts Interrogation of staff Imprisonment	369,378.51	Not in operation After conditionally releasing L.Yunus and A.Yunus abandoned the country	
2	Election Monitoring and Democracy Study Center	Anar Mammadli Bashir Suleymanli	Criminal case Search Interrogation of staff Imprisonment	27,517.61	Not in operation A.Mammadli and B.Suleymanli released by pardon decree	
3	Human Rights Club	Rasul Jafarov	Criminal case Search Seizure on accounts Interrogation of staff Imprisonment	6,257.11	Not in operation Tax penalty is paid Seizure on bank accounts remains R.Jafarov released by pardon decree	
4	Legal Education Society	Intigam Aliyev	Criminal case Search Seizure on accounts Interrogation of staff Imprisonment	65,636.85	Not in operation I.Aliyev conditionally released Travel ban remains	
5	Institute Reporter' Freedom and Safety	Emin Huseynov	Criminal case Search Seizure on accounts Interrogation of staff Travel ban for staff members	247,551.72	Not in operation Penalty is paid Seizure on bank accounts remains Travel ban lifted E.Huseynov in exile	
6	National and International Study Center	Leyla Aliyeva	Criminal case Seizure on accounts Interrogation of staff Travel ban for staff members	11,7456.81	Not in operation Seizure on accounts remains L..Aliyeva in exile	
7	Public Association for Assistance to Free Economy	Zohrab Ismayil	Criminal case Seizure on accounts Interrogation	10,689.84	Not in operation Seizure on bank accounts lifted Recently Tax Dep seized 11,097 AZN from bank accounts Z.Ismayil in exile	

8	Economic Research Center	Gubad Ibadoglu Galib Bayramov	Criminal case Search Seizure on accounts Interrogation of staff	130,700.79	Not in operation Seizure on bank accounts lifted Prosecution has not returned seized documents
9	Democracy and Human Rights Resource Center	Asabali Mustafayev	Criminal case Seizure on accounts Interrogation of staff	6,131.07	Not in operation Seizure on bank accounts remains Travel ban
10	Azerbaijan Lawyer Association	Annagi Hajibayli	Criminal case Seizure on accounts Interrogation of staff	4,726.00	Not in operation Seizure on bank accounts remains Tax penalty is paid Travel ban
11	Oilworkers' Rights Protection Organisation	Mirvari Gahramanli	Criminal case Seizure on accounts Interrogation of staff	79,679.81	Operates
12	Democracy and Human Rights PU	Elchin Abdullayev	Criminal case Seizure on accounts Interrogation of staff	21,942.32	Not in operation Seizure on bank accounts lifted Criminal case stopped permanently E.Abdullayev in exile
13	Caucasus Media Investigation Center	Anar Orujov	Interrogations	8,035.89	
14	International Cooperation of Volunteers PU	Elnur Mammadov	Criminal case (A.Mammadli) Interrogations	20,196.62	Not in operation Seizure on bank accounts lifted Conditionally free Travel ban
15	Aran Humanitarian Regional Development Organisation	Rauf Aliyev	Criminal case Interrogations	13,928.89	Not in operation
16	Media and Public Initiatives Center	Samir Aliyev	Seizure on accounts Interrogations	282.29	Not in operation Seizure on bank accounts lifted
17	East-West Study Center	Arastun Orujlu	Interrogations	72,037.18	Not in operation

\* Original amount of tax penalties decided by Tax departments. Apart this the tax departments charged additional fines to the organization for "nor realizing payments on time".



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